82-179

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1982

NO. 82 -

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FRANK JOSEPH SACCHINELLI

Petitioner

v.

STATE OF GEORGIA

Respondent

PETITION FOR
WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE UNITED STATES

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IN THE SUPREME COURT
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UNITED STATES

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NO. 82 -

QUESTIONS PRESENTED

I.

Whether police may use both lawful and unlawful methods in their investigations under an "any evidence" theory.

II.

Whether the Georgia Courts below erred when they denied Petitioner's Motion to Suppress evidence unlawfully obtained pursuant to an electronic surveillance warrant which was procured through a blatantly invalid affidavit.

III.

Whether the Indictment herein should have been dismissed due to the flagrantly unlawful investigative techniques of the Cobb County Georgia District Attorney's Office and Police Department.

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IN THE SUPREME COURT
OF THE UNITED STATES

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FRANK JOSEPH SACCHINELLI, Petitioner,	)	
v.	)	CASE NO. 82 - _____
STATE OF GEORGIA, Respondent.	)	

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE UNITED STATES

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the Court of Appeals and the Supreme Court of the State of Georgia which judgment was finally entered on May 18, 1982.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals for the State of Georgia is reported at 161 Ga. App. 763 and is set out in Appendix A attached hereto. Petitioner moved the Court of Appeals for the State of Georgia for a rehearing on that appeal. See, the aforesaid opinion attached hereto as Appendix "A". Petitioner then applied for Certiorari to the Supreme Court of the State of Georgia. The Supreme Court of the State of Georgia, with one justice dissenting, denied that Application for Certiorari. Said denial is set out in the Exhibit Appendix filed herewith. Petitioner finally moved the Supreme Court of the State of Georgia for a rehearing on the Application for Certiorari. On May 18, 1982, the Supreme Court for the State of Georgia denied that Motion for Rehearing on the Application for Certiorari with one justice dissenting. That denial is set out in the Exhibit Appendix filed herwith.

JURISDICTION

The Georgia Supreme Court of the State of Georgia, the court of last resort in said state, rendered a final decision in this matter on May 18, 1982.

Jurisdiction of this court is invoked under 28 U.S.C. § 1257(3). Petitioner having asserted below and now asserts in this Court the deprivation of rights secured by the Constitutions of the United States and the State of Georgia.

QUESTIONS PRESENTED

I.

Whether police may use both lawful and unlawful methods in their investigations under an "any evidence" theory.

II.

Whether the Georgia Courts below erred when they denied Petitioner's Motion to Suppress evidence unlawfully obtained pursuant to an electronic surveillance warrant which was procured through a blatantly invalid affidavit.

III.

Whether the Indictment herein should have been dismissed due to the flagrantly unlawful investigative techniques of the Cobb County Georgia District Attorney's office and Police Department.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and the following sections of the Georgia Constitution:

Article I, Section I, Paragraph I (Ga. Code Ann. § 2-101).

> "No person shall be deprived of life, liberty or property except by due process of law."

Article I, Section I, Paragraph X (Ga. Code Ann. § 2-110).

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath, or affirmation, particularly describing the place, or places, to be searched and the persons or things to be seized."

This case also involves the following statutory provisions of the State of Georgia:

Ga. Code Ann. § 27-313 Motion to Suppress evidence illegally seized.

> "(a) A Defendant aggrieved by an unlawful search and seizure may move the

Court for the return of property, the possession of which is not otherwise unlawful and to suppress as evidence anything so obtained on the grounds that:

(1) The search and seizure without a warrant was illegal; or

(2) The search and seizure with a warrant was illegal because the warrant is insufficient on its face; there was not probable cause for the issuance of the warrant; or, the warrant was illegally executed.

(b) The motion shall be in writing and state facts showing wherein the search and seizure were unlawful. The Judge shall receive evidence out of the presence of the jury on any issue of fact necessary to determine the motion, and the burden of proving that the search and seizure were unlawful shall be upon the State. If the motion is granted the property shall be restored, unless otherwise subject to lawful detention, and it shall not be admissible in evidence against the movant in any trial.

(c) The motion shall be made only before a Court with jurisdiction to try the offense. If a criminal accusation is filed, or if an Indictment or special presentment is returned by a Grand Jury, the motion shall be made only before the Court in which said accusation, Indictment or special presentment, is filed and pending."

STATEMENT OF THE CASE

On May 6, 1980, Appellant and WALTER ARTHUR PARKER, were arrested by agents from the Cobb County and Bartow County Georgia Police Departments, from the Georgia Bureau of Investigation and from United States Customs upon landing at the Bartow County, Georgia airport. The items seized at the end of the runway to the airport included 995 pounds of marijuana. Among items seized inside the airplane were less than an ounce of marijuana.

During the August 1980 term, the Grand Jury of Bartow County, Georgia indicted the Petitioner along with WALTER ARTHUR PARKER for Possession with Intent to Distribute Marijuana, a Controlled Substance in Violation of the Georgia Controlled Substance Act.

Pre-trial Motions to Suppress the physical evidence obtained the night of the arrest were filed in the case. In essence, the pre-trial motions dealt with the use by the Cobb County Georgia District Attorney's office and Police Department of subpoenas which were procured and utilised without the knowledge or supervision of the Cobb County Georgia Superior Court. Petitioner's position was, and still

is, that the information obtained from him through these fraudulent subpoenas tainted Petitioner's arrest and subsequent Indictment. Petitioner also filed a motion requesting suppression of evidence obtained from an electronic surveillance.

The Honorable Tom Pope, Judge of the Superior Court of Bartow County, State of Georgia, denied Petitioner's Motion to Suppress both as to the unlawful subpoena and as to the electronic surveillance.

On December 2, 1980, Petitioner, along with WALTER ARTHUR PARKER, were brought to trial in Cartersville, Georgia. On December 4, 1980, the jury brought back verdicts of guilty as to both Appellant and Mr. Parker. The Petitioner was immediately incarcerated and his request for an appeal bond was denied.

On December 15, 1980, the Court sentenced Appellant, a first offender, to 10 years in the Georgia State penal system, 9 years to serve, 1 year probated and a $10,000.00 fine.

Appellant timely filed his Notice of Appeal and the case was brought properly before the Court of Appeals below. That appeal insofar as this Application for Writ of Certiorari is concerned resulted

from the Trial Court's denial of Petitioner's Motion to Suppress all the evidence seized on the night of his arrest and to dismiss the case against him. The basis of these motions were certain alleged illegalities in the course of the investigation which led law enforcement agents to the Bartow County, Georgia airport. Petitioner contended that Cobb County, Georgia authorities used sham subpoenas to seize messages taken for Petitioner by a telephone message service with which he had contracted. The information garnered from these illegally seized messages was then used along with deliberately false statements to obtain an electronic surveillance warrant (wiretap). The information from that wiretap then resulted in Petitioner's arrest and conviction.

After hearing argument on the matter by Petitioner only, the Court of Appeals concluded as follows:

> "Our review of the record reveals that Appellant's objection to the investigatory methods of the Cobb County Police are apparently well founded. It appears that the Cobb County Police used subpoenas issued in false names and contained language which appears likely to intimidate witnesses into remaining silent about the receipt of such subpoenas. It further appears from the record that some of the statements in the affidavit submitted in support of the request for a wiretap warrant were false. Whether they were deliberately false is not so clear."

Despite these findings, the Court of Appeals finally determined as follows:

> "However, the misconduct of the Cobb County Police and the apparent involvement of the Cobb County District Attorney in that misconduct, though reprehensible, do not require a reversal of Appellant's convictions. The reason for our decision is the same articulated by the Trial Judge, there is sufficient evidence to warrant a conclusion that the arrest of the Appellant and the seizure of the contraband stemmed from independent sources and was not tainted by the dubious methods of the Cobb County authorities. (case citation omitted) Although there is evidence to support Appellants' argument that their arrest stemmed directly from the information gained through an abuse of the subpoena power and by a wiretap based on allegedly false swearing, there is also sufficient evidence from which the Trial Judge could conclude, as the Trial Judge in this case did conclude, that there were separate and untainted sources of information which could and did lead the police to Appellants. In the Motion to Suppress the Trial Court is the finder of fact and its findings will not be disturbed unless clearly erroneous. McDonald v. State, 156 Ga. 143, 146 (1) (273 S.E.2d 881). We conclude, therefore, that since there was no evidence from which the Trial Court could find that the arrest of Appellant was not tainted by the alleged policemen's misconduct. There was no error in the denial of Appellant's Motion to Suppress the evidence seized at the Bartow County airport. For the same reason we find no error in the Trial Court's refusal to dismiss the Indictment for governmental misconduct."

Within the time provided by law Petitioner filed a Motion for Rehearing in the Court of Appeals of Georgia.

The Motion for Rehearing was denied by the Court of Appeals on March 23, 1982. In denying said Motion the Court of Appeals made no changes in its opinion. Thereafter, Petitioner timely applied to the Supreme Court of Georgia for Certiorari. The Supreme Court of Georgia denied Petitioner's Application for Certiorari on April 21, 1982 with one dissent. Petitioner then timely filed a Motion for Rehearing with the Supreme Court of the State of Georgia. That Motion for Rehearing was denied on May 18, 1982, again with one dissent. Petitioner now timely brings this Application from that final decision of the Supreme Court of the State of Georgia, the appellate court of last resort in said state.

The citations herein refer to the pre-trial motion hearing which are cited as MT with the volume and page number following in the record. The pertinent pages are attached hereto in Appendix "B" with the appropriate volume and page number set out thereon. References to exhibits and the decisions of the Georgia Supreme Court are set out in a separate appendix filed herewith.

FEDERAL QUESTIONS RAISED AND DECIDED BELOW

In the course of the pre-trial hearings, Appellant was able to show that the Cobb County Georgia District Attorney's office, in conjunction with the Public Safety Director of Cobb County, Georgia, had developed a procedure whereby they would obtain information about citizens of Cobb County, Georgia, including Appellant, by using subpoenas that were neither issued nor supervised by the Superior Court of Cobb County, Georgia. These subpoenas obtained in blank from the Superior Court of Cobb County, Georgia were filled in by the District Attorney's office or by the Police Department with a fictitious case name and were entitled "State of Georgia v. Ike Smathers". Additionally, the top law enforcement officials in Cobb County sanctioned that language included in the body of the subpoenas ordering citizens to come to Court for a hearing that was never scheduled by a Judge. The hearing date was merely "made-up". Under the direction of the District Attorney of Cobb County, additional language was placed in the subpoenas threatening criminal prosecution if the contents of the subpoenas were

disclosed to anyone other than the police for a period of 90 days. The use of these fictitious "Ike Smathers" subpoenas was wide spread in Cobb County, Georgia. In the case of the Petitioner, the District Attorney's office used the subpoena to obtain information from Petitioner's answering service. Information obtained through the "Ike Smathers" subpoena and subsequent wiretap led to Appellant's arrest. These "Ike Smathers" subpoenas were, in essence, general warrants and as such clearly violative of the Fourth Amendment to the United States Constitution, Article I, Section I, Paragraph X (Ga. Code Ann. § 2-110) of the Georgia Constitution and Georgia case law which states that "general warrants . . . are absolutely void, and will afford no protection to any officer or party engaged in their execution, when called upon to answer for an invasion of personal rights." In Re Lester Mayor, 77 Ga. 143, 148 (1886).

The police misconduct involved in the investigation of Appellant did not stop with Appellant's arrest. On May 30, 1980, 24 days after Appellant's arrest, another subpoena similar to the earlier "Ike Smathers" subpoena was served on Appel-

lant's answering service requesting additional messages and phone numbers of Appellant. That subpoena is found in Exhibit Appendix p. 80. Ms. Bryan, the owner of Northwest Answering Service, testified that she refused to comply with the subpoena and asked to call her lawyer (MT Vol. II, p. 606). Officer Phillips of Cobb County and Officer Padgett of the Georgia Bureau of Investigation tried in vain to persuade her not to do so (MT Vol. II, p. 606). However, this time Ms. Bryan persisted and called her lawyer, Mr. Larry Custer (MT Vol. II, p. 606). Mr. Custer went to the Cobb County Superior Court at the time and day mentioned in the subpoena (MT Vol. 2, p. 559). He found that the hearing indicated in the subpoena was not scheduled by the Clerk or by a Judge. He then went to the District Attorney's office and when he confronted an Assistant District Attorney with the subpoena he was met with only a smile and a shrug (MT Vol. 2, p. 561).

For a period of 40 days Cobb County Police eavesdropped on Appellant's phone conversations. The wiretap was procured by a submission to the Superior Court of Cobb County, Georgia of an affidavit containing misstatements of material fact. Furthermore, the affidavit contained information gathered

from the use of the "Ike Smathers" subpoena. The information gathered by law enforcement as a result of the wiretap was "tainted" and subject to suppression by the Trial Judge.

The conduct of the law enforcement officials violated Appellant's Fourth Amendment constitutional rights, his Fifth Amendment constitiutional right to due process and Article I, Paragraph I, Section I (Ga. Code Ann. § 2-101) and Article I, Section I, Pargraph X of the Georgia Constitution as well as committing a fraud upon the judicial system. Information leads developed from both the fictitious subpoena and unlawful wiretap resulted in Appellant's arrest. The Trial Court erred when it did not suppress all evidence obtained as a result of the "Ike Smathers" subpoena and the wiretap. Furthermore, the Trial Court erred in not exercising its discretion to dismiss the Indictment based on outrageous government conduct.

The District Attorney and Public Safety Director of Cobb County, Georgia, committed a fraud upon the Court and upon the citizens of the state by utilising investigative techniques which directly violated the Constitutions of the United States and the State of Georgia. They corrupted the trust placed in them and

and acted in a brazen disregard of their oaths of office. Appellant's rights were violated deliberately, wantonly and maliciously. This conviction warrants the considered and review of this Court and a reversal.

REASONS FOR GRANTING THE WRIT

I. This Court should grant Certiorari to decide the issue whether police may use both lawful and unlawful methods in their investigations under an "any evidence" theory.

On September 27, 1979, Sergeant Sisson, a Cobb County Police Officer, served Sharon Bryan, the owner of Northwest Answering Service, with a subpoena entitled "State of Georgia v. Ike Smathers." See Exhibit Appendix p. 78. Sergeant Sisson obtained the "Ike Smathers" subpoena from the Cobb County District Attorney's office (MT Vol. II, p. 519, 520 and 534). Sergeant Sisson served the subpoena

knowing that "Ike Smathers" did not exist (MT Vol. 2, p. 525). This "Ike Smathers" subpoena had no case number nor was it returnable to a Grand Jury. The subpoena compelled Ms. Bryan to furnish any and all records pertaining to the following people: (1) Frank Sacchinelli; (2) Danny Benson; and (3) Steve Musick. The subpoena stated there would be hearing at 9:30 a.m. on September 27, 1979, to compel the production of documents requested, but "in lieu of your appearing in Court on the above date, this information may be released to Sgt. David Sisson of the Cobb County Police Department or his representative delivering this subpoena." (Exhibit Appendix p. 78).

Ms. Bryan testified in the Motion to Suppress hearing that she was served with a subpoena on September 27, 1979 at approximately 9:00 a.m. in the morning, one-half hour before the hearing was scheduled to begin. She gave Officer Sisson whatever he requested and whatever records she had concerning Appellant. (MT Vol. II, p. 582). Ms. Bryan further explained that Officer Sisson told her not to discuss this subpoena with anyone (MT Vol. II, p. 601) and that she gave the information to the police because she felt she didn't have any choice.

(MT Vol. II, p. 620). Ms. Bryan was told by Officer Sisson that if she discussed the subpoena with anyone for a period of 90 days, she would interfere with the enforcement of the law. (MT Vol. 2, p. 586). Officer Sisson took all the messages she had for Appellant's phone, as well as, looking through other messages from other customers and taking the account cards of many customers that had nothing to do with the persons named on the subpoena (MT Vol. II, p. 598 and 620).

Karen Conner, a detective with the Cobb County Police Department, testified that she prepared "Ike Smathers" subpoenas under the direction of the District Attorney (MT Vol. 2, p. 549-550). Detective Conner stated that the Cobb County Georgia Police Department, with the expression permission of the County's District Attorney, had been utilizing subpoenas entitled "State of Georgia v. Ike Smathers" as an "investigative" tool. (MT Vol. II, p. 550). The language in the subpoena instructing the recipient not to disclose the existence of the subpoena for 90 days or be guilty of interference with the law, was placed in the subpoena through instructions from the District Attorney (MT Vol. II, p. 550). The hearing date placed in the subpoena was picked out by Ms. Conner

without checking with the Court and was "made-up" (MT Vol. II, p. 552). After typing "Ike Smathers" subpoenas, Ms. Conner sent copies to the District Attorney (MT Vol. II, p. 553). This procedure was with the full knowledge of the Director of Public Safety for Cobb County, Georiga (MT Vol. II, p. 645). During the hearing on the Motion to Suppress, Cobb County police officers admitted serving "Ike Smathers" subpoenas on numerous occasions (MT Vol. II, p. 745). One of the many recipients of these subpoenas was Southern Bell. Mr. Gerald McDaniel, Director of Southern Bell Security, testified to receiving and complying with "Ike Smathers" subpoenas. (MT Vol. II, p. 764).

The Trial Court determined that the "Ike Smathers" subpoena was illegal, stating was follows:

> "I mean, you know, the Ike Smathers subpoena is illegal, you know. There is no question about it. It is issued, no doubt, people get in the habit, I guess, of the subpoena being issued in blank, and they have got a tool available to them and then they use that without -- for an invalid purpose." (MT Vol. III, p. 1473).

The information seized from the "Ike Smathers" subpoena was utilized by Officer Pierce to obtain electronic surveillance of Appellant's telephone conversations. Under traditional Fourth Amendment

principals and under Articles I, Section I, Paragraph X (Ga. Code Ann. § 2-110) of the Georgia Constitution. The arrest of Petitioner at the Bartow County, Georgia airport and the seizure of the items at the end of the runway and inside the plane, items which were later introduced at trial, relate back to the information unlawfully obtained from Petitioner's answering service. See Wong Sun v. United States, 371 U.S. 471 (1963). The discussion of this link between the "Ike Smathers" subpoena, the electronic surveillance and the Petitioner's arrest follow:

After Sergeant Sisson obtained Petitioner's messages from Northwest Answering Service, they were analyzed by the Special Investigation Section of the Cobb County Georgia Police Department (MT Vol. II, p. 529). The phone numbers were checked out with local law enforcement authorities, and any leads developed from the messages were pursued (MT Vol. II, p. 705). The Cobb County Police Department condensed the information into a case report (Exhibit Appendix p. 192-212). That report was then placed in Petitioner's Cobb County Georgia Police file for further review and study by Officer Pierce, the case agent. (MT Vol. II, p. 700, 701). Officer Pierce testified that after reviewing the case report, he con-

tinued to investigate Petitioner by looking over the messages and telephone calls in a continuing effort to gather information on Petitioner's activities (MT Vol. II, p. 702). Based on the information and messages, Pierce wrote to law enforcement agencies and inquired about the names to whom the telephone numbers were listed and whether those individuals had criminal records (MT Vol. II, p. 706). The information that the police seized from Northwest Answering Service was quite valuable. The Cobb County Police summarizing this information in the case report as follows:

> "On September 27, 1979, a subpoena was served to Sharon Bryan, Mgr. of the Northwest Answering Service, requesting the records that they had regarding three (3) subjects, Danny Benson (Danny Benson Aircraft Sales), Steve Musick and Frank Sacchinelli. These records in the form of messages taken by the line operators show that the aforementioned subjects were making frequent trips between Atlanta, Florida and New York. That these subjects used both commercial and private air services as their mode of travel. These subjects would keep in touch on a day to day basis. That these subjects are in contact with subjects in other countries that are noted for smuggling narcotics. They have established a pattern similar to other known smuggling operations." (emphasis added) (Exhibit Appendix p. 192).

In February 1980, Officer Pierce obtained authorization to eavesdrop on Petitioner's phone con-

versations. That authorisation was obtained pursuant to an affidavit prepared by Pierce and presented to the Superior Court of Cobb County, Georgia (Exhibit Appendix pp. 32-42). An examination of the affidavit shows that information seized from Northwest Answering Service was contained in the body of the affidavit. On page five of the affidavit, Pierce states that "numerous telephone calls have been made from (404) 435-2754 to (714) 494-3310 and (714) 497-2421, according to the records of the Southern Bell Telephone Company obtained through subpoena by affiant." Telephone number (714) 494-3310 was obtained by the police from the information seized at Northwest Answering Service. That information was contained in a message to Petitioner from "Sam" (Exhibit Appendix p. 208). Furthermore, even if some phone numbers were obtained by the police who subpoenaed Southern Bell, the subpoena was another unlawful "Ike Smathers" subpoena. Starting in January, 1980 and continuing through August 1, 1980, Officer Pierce utilizing a subpoena entitled "State of Georgia v. Ike Smathers" requested and received toll information from Southern Bell regarding Petitioner's phone (Exhibit Appendix pp. 117-171).

The pattern of Petitioner's activities first discovered from the use of "Ike Smathers" subpoena was utilized by Pierce as a part of his "probable cause" that Petitioner was engaged in unlawful conduct. Pierce's affidavit explains and delineates alleged contact between Petitioner and individuals who were suspected smugglers (Exhibit Appendix pp. 32-42). It is obvious from a review of Pierce's affidavit that they started with the framework of Petitioner's phone messages and further developed leads and information. Pierce admitted as much by stating that the information contained in his affidavit was all sources he had including responses he had from other police departments concerning subscriber information (MT Vol. II, p. 709).

The Bartow County airport is not mentioned in the messages obtained from Northwest Answering Service. The fact that Petitioner had access to an airplane based there and that he might have been planning a smuggling operation which involved that airport was determined from the electronic surveillance conducted on Petitioner's phone. The information obtained from the use of the "Ike Smathers" subpoena on Northwest Answering Service was utilized as part of Officer Pierce's affidavit to

obtain electronic surveillance. As a result of the wiretap on Petitioner's phone, law enforcement officers specifically located the Cessna airplane at the Bartow County, Georgia airport. Officer Pierce in his affidavit to the Court, seeking an extension of the wiretap, states as follows:

> "The electronic surveillance was further revealed that said importation will be accomplished through the use of aircraft and Frank Joseph Sacchinelli requested maintenance assistance on one Cessna 310 located at an airport in Bartow County, Georgia". (emphasis added) (Exhibit Appendix p. 54).

Petitioner established a clear link between the information obtained from Northwest Answering Service and the procurement of the wiretap warrant. The police utilized the information obtained from the warrant to locate Petitioner at the Bartow County, Georgia airport. They placed him under surveillance which resulted in his arrest. Had it not been for the "Ike Smathers" subpoena on Northwest Answering Service, the wiretap would not have commenced and had it not been for the wiretap, Petitioner's location at the Bartow County airport would not have been determined by law enforcement officers. The record is clear that the Petitioner's arrest was a "fruit" of unlawful activities by the police. The exclusionary

rule bars from trial physical tangible material obtained as a direct or indirect result of unlawful searches or seizures. Wong Sun v. United States, 371 U.S. 471, 484 (1963); Ga. Code Ann. § 27-313. The Trial Court erred in failing to suppress the evidence seized at the airport the night of Appellant's arrest.

Nonetheless the Court of Appeals for the State of Georgia affirmed the Trial Court stating as follows:

> "Our review of the record reveals Appellant's objection to the investigatory methods of the Cobb County Police are apparently well founded. It appears that the Cobb County Police used subpoenas issued in false names and containing language which appears likely to intimidate witnesses into remaining silent about the receipt of such subpoenas. It further appears from the record that some of the statements in the affidavits submitted in support of the request for a wiretap warrant were false. Whether they were deliberately false is not so clear. However, the misconduct of the Cobb County Police and the apparent involvement of the Cobb County District Attorney in that misconduct, though reprehensible, do not require a reversal of Appellant's convictions. The reason for our decision is the same articulated by the Trial Judge:
>
> "There is sufficient evidence to warrant a conclusion that the arrest of the Appellants and the seizure of the contraband stemmed from independent sources and was not tainted by the dubious methods of the Cobb County authorities. (case citation omitted). Although there is evidence to support Appellant's argument that their arrest stemmed directly from the information gained through an abuse of the subpoena power and by a wiretap based on allegedly false swearing, there is also sufficient evidence from which the Trial Judge could conclude, as the Trial Judge in this case did

conclude, that there were separate and untainted sources of information which could and did lead the police to Appellants. In a Motion to Suppress the Trial Court is the finder of fact and its findings will not be disturbed unless clearly erroneous. McDonald v. State, 156 Ga. App. 143, 146 (1) (273 S.E.2d 881). We conclude, therefore, that since there was evidence from which the Trial Court could find that the arrest of the Appellant was not tainted by the alleged policemen's conduct there was no error in the denial of Appellant's Motion to Suppress the evidence seized at the Bartow County airport. For the same reason, we find no error in the Trial Court's refusal to dismiss the Indictment for governmental misconduct."

The Supreme Court of Georgia affirmed the Court of Appeals of the State of Georgia when it denied Petitioner's Application for Certiorari with one justice dissenting.

Both courts, the Court of Appeals in the State of Georgia, directly, and the Supreme Court of Georgia, by implication, relied on McDonald v. State, 156 Ga. App. 143, 273 S.E.2d 881 (1980). That reliance is misplaced and the case is misapplied here. In the McDonald case, the Court of Appeals for the State of Georgia states in pertinent part:

" . . . we look to the totality of the circumstances, including but not limited to, information obtained by law enforcement agents conducting a common investigation.

. . .

On the Motion to Suppress evidence, the Trial Judge sits as trier of the facts, hears the evidence, and his findings based

on conflicting evidence are analogous to the verdict of a jury. It should not be disturbed by a reviewing court if there is any evidence to support it."

The problem here is that there is no conflict in the evidence. The Court of Appeals for the State of Georgia found that there is evidence to support Petitioner's argument that Petitioner's arrest stemmed directly from the information gained through an abuse of the subpoena power and by a wiretap based on false swearing. On the other hand, the Court of Appeals found that there is also sufficient evidence from which a Trial Judge could conclude that there were separate and untainted sources of information which could and did lead the police to Petitioner. Unfortunately the Court of Appeals in the State of Georgia does not present any facts to bolster this conclusion. The reason no facts are shown that under the totality of the circumstances here only scant, if any, evidence, shows that "there were separate and untainted sources of information which could and did lead to Appellant." In essence the overwhelming evidence clearly demonstrates that the unlawful investigatory techniques are what led officials to Petitioner.

However, even if the Court of Appeals' position is accepted which as previously shown goes against the totality of the circumstances here, the law of that case does not apply. Under the Court of Appeals determination then, either the lawful evidence, unlawful evidence or both may have led officials to Petitioner and to his arrest. In essence the Court of Appeals finds that there is a doubt in this regard. Such a case, no matter which position the Trial Court took either denying or granting the Motion to Suppress, it would have been affirmed under the Court of Appeals decision. The "any evidence" rule fails in such a case. The Court, be it Trial or Appellate Court, must go beyond that rule to look at the totality of the circumstances as they are directed to do by the McDonald case. See in this regard, Franks v. Delaware, 438 U.S. 154, 155 (1978). Otherwise, the Trial Court could, as Appellant contends here, base its decision on a scintilla of, if not a mere hope for, evidence even though the overwhelming weight, if not all the evidence, indicates quite the contrary.

As stated in the case cited by the Court of Appeals, the Judge sits as the trier of fact in a fashion analogous to the jury and in that regard must

consider the totality of the circumstances. Hence, more than just "any evidence" will be necessary to find that the arrest of Petitioner was not tainted by the alleged police misconduct particularly in an instance such as this case. To decide otherwise is to say that law enforcement officials can use both lawful and unlawful means to gather evidence. So long as the lawful means purportedly succeeds in gathering any evidence that leads to an individual that will be sufficient. The danger and message of that position are obvious, the Court in effect says:

> "Gentlemen, certainly your unlawful means are condemned and will be continued to be condemned. Still, all in all, they are really not so bad when used alongside lawful investigative means, so use both, just make sure the lawful means yields some evidence -- any evidence -- and this Court will uphold you."

The illogic of that position is painfully obvious particularly when it ultimately concerns each and every citizen's right to freedom and right to privacy.

The McDonald case cited by the Court does not take that position. The Georgia Courts of Appeal erred in this regard. The Supreme Court of the United States should therefore grant this Application for Certiorari and reverse the holding of the Georgia

courts below.

II. This Court should grant certiorari to consider whether the Georgia courts below erred when they denied Petitioner's Motion to Suppress Evidence unlawfully obtained pursuant to an electronic surveillance warrant which was procured through a blatantly invalid affidavit.

When the Cessna airplane arrived at the Bartow County, Georgia airport on May 6, 1980, officers of the Georgia Bureau of Investigation, Cobb County Police, Bartow County Sheriff's Office and United States Customs were lying in wait. Officer Phillips of the Cobb County Police stopped and detained Petitioner when the plane landed. Officer Phillips testified that he and other officers approached the airplane with guns drawn, shouting "Halt" (MT Vol. I, p. 244). The police officers immediately searched the airplane and seized items inside the plane including part of a gas pump, paper, charts, a piece of wood, marijuana residue and other miscellaneous items.

(MT Vol. I, pp. 250-251). This evidence was introduced by the State of Georgia at trial. Officer Phillips admitted seizing the evidence in the airplane before arresting Petitioner. (MT Vol. I, p. 251). Officer Phillips explained his conduct by stating they were expecting drugs. (MT Vol. I, p. 230). It was after Appellant was forcibly detained and the airplane searched that Officer Phillips was notified that bails of marijuana had been found at the end of the runway. (MT Vol. I, p. 221). Petitioner, through reference to the record, and the ruling of the Trial Judge has demonstrated the illegality of the "Ike Smathers" subpoenas. Petitioner has further shown that information obtained from his answering service was placed in the body of the affidavit of Officer Pierce, which resulted in electronic eavesdropping. The eavesdropping gave the police the location of the plane. (Exhibit Appendix p. 54).

Additionally, however, it is Petitioner's position that Pierce's affidavit was fatally defective in that it contained information known to be false. Those deficiencies totally unrelated to the "Ike Smathers" material in and of themselves are sufficient to void the Petitioner's arrest and suppress the physical evi-

dence obtained at the Bartow County airport. Franks v. Delaware, 438 U.S. 154 (1978) mandates that:

> "If, after evidentiary hearing, Defendant establishes by a preponderance of evidence that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by a affiant in the search warrant affidavit, and, that affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit." Id at 155.

During the Motion to Suppress hearing, William Riley, the former Senior Investigator of the Organized Crime and Public Corruption Prosecution Unit of the Dade County (Florida) State Attorney's Office testified both as a factual and expert witness. Mr. Riley was involved as a police officer in the investigation of Petitioner's activities when he ventured to the State of Florida in 1978. (MT Vol. III, p. 1397-1400). Mr. Riley testified, from personal knowledge, that information and facts contained in Pierce's affidavit were false. Pierce's affidavit states that Appellant, while in Miami, Florida, purchased cocaine on November 1, 1978 and made arrangements to do so again on November 2, 1978. (Exhibit Appendix p. 33). Mr. Riley, however, stated that he

was in charge of the investigation of Petitioner in the Miami area, and that Petitioner never purchased cocaine on November 1 nor made arrangements to purchase cocaine on November 2 (MT Vol. III, p. 1398). Mr. Riley had Petitioner under both physical and electronic surveillance on the dates mentioned in Pierce's affidavit, and explained that he would have arrested Petitioner had he engaged in any unlawful activities (MT Vol. III, pp. 1398-1400).

Pierce's affidavit claims information regarding Appellant's activities in the State of Florida was obtained from the "Florida Attorney General's Organized Crime Task Force" through "Assistant State Attorney Martin Dardis" (Exhibit Appendix p. 33). Mr. Riley testified that there was no such organization in the State of Florida and that Martin Dardis, who is both a personal friend and was a fellow police officer, was not, and has never been, an Assistant State Attorney (MT Vol. III, p. 1398). Mr. Riley's testimony unrefuted by the State pointed out additional misstatements of Officer Pierce. On page six of his affidavit (Exhibit Appendix p. 37), Pierce states:

> "Affiant further shows that on the 24th day of August, 1979, Sam Sarcinelli and Pamela Messina, along with another individual indicted by the Federal Grand Jury

on the charges of conspiracy and possession with intent to distribute approximately thirteen and two-tenths pounds of cocaine. The information related to affiant by members of the Drug Enforcement Administration in the month of September, 1979 and again in January, 1980."

Pierce's affidavit is dated February 26, 1980. On January 25, 1980, the United States Magistrate for the United States District Court, Southern District of Florida, granted Sarcinelli and Messina's Motion to Dismiss the Indictment or to Suppress the Evidence. On February 6, 1980, the United States District Judge for the Southern District of Florida incorporated the Magistrate's recommendation and suppressed the evidence against Sarcinelli and Messina (Exhibit Appendix pp. 514, 515). Therefore, when Pierce presented his affidavit to the Superior Court of Cobb County, Georgia, he failed to include the correct status of the case involving Sarcinelli and Messina. He failed to alert the Court that the prosecution of Sarcinelli and Messina was halted by the ruling of a United States District Judge, facts that clearly were relevant to the Court's determination of probable cause.

When this Court disregards the misstatements of facts contained in Pierce's affidavit, the affidavit is

stripped to mere conclusions and stale information, neither of which is sufficient to support probable cause.

The affidavit is replete with unsupported conclusions and warrantless presumptions. Many of these were shown through the unrebuted testimony of William Riley. Mr. Riley was qualified by the Court as an expert witness as to the law of electronic surveillance under the federal statute. (MT Vol. III, p. 1396). As the Georgia Electronic Surveillance Law complies with the minimum standards dictated by the federal law, Mr. Riley's opinion as to the deficiency as to Pierce's affidavit, under federal law, would also be valid as to the deficiency as to the affidavit under Georgia law. See Morrow v. State, 147 Ga. App. 395, 249 S.E.2d 110 (1978). Mr. Riley stated that in his opinion the affidavit, although mentioning many names and stating many dates, did not establish a pattern or a course of conduct involving Petitioner sufficient to substantiate probable cause (MT Vol. III, pp. 1430-1437). An example of Pierce's failure to show a connection between Petitioner and alleged unlawful activities is contained on page three of Pierce's affidavit. (Exhibit Appendix p. 34). Pierce concludes there is a relationship between Petitioner and John

Daniel Benson. That conclusion used as a basis for probable cause is determined solely on the allegation that Petitioner, in the year 1978, called a Forrest Roberts. Forrest Roberts, in the year 1979, was found not guilty of conspiracy to import marijuana. His Co-Defendant, John Daniel Benson, was found guilty. Pierce's conclusions linking Petitioner with John Daniel Benson, through Forrest Roberts, are pure speculation. The affidavit fails to describe, in any detail, any relationship between Petitioner and John Daniel Benson which amounts to suspicion of criminal conduct. The law is clear that rumours, innuendos or accusations based merely on general reputation do not furnish the basis for probable cause. Spinelli v. United States, 393 U.S. 410, 416 (1969); State v. Griffin, 154 Ga. App. 361, 268 S.E.2d 412 (1980).

Page four of Pierce's affidavit contains the most glaring example of the inadequacy of the information providing the foundation for Pierce's assertion of probable cause. (Exhibit Appendix p. 35). Pierce states that Appellant placed numerous calls to Ellis Aviation, a business located at the Carrolton, Georgia airport. Pierce did not state when the calls were made. Pierce recites that in the year 1976 a DC 3

aircraft landed at the Carrolton airport and that this aircraft was found to contain marijuana. There are absolutely no factual allegations connecting that airplane and that marijuana with Ellis Aviation or with Petitioner. Pierce, through an exercise of reasoning that defies a logical explanation, utilized that information as a basis for probable cause. Mr. Riley expressed his opinion that the language in Pierce's affidavit was a flagrant attempt to "flower-up" the affidavit. (MT Vol. III, p. 1433). This cannot properly form the foundation for probable cause. Spinelli op. cit.

Neither can stale information form the basis for a valid warrant. See E.G. Fowler v. State, 121 Ga. App. 22, 172 S.E.2d 447 (1970); State v. Boswell, 131 Ga.App. 657, 659 206 S.E.2d 682 (1974) in which the Court noted that "cases are unanimous in holding that intervals of two months or more between the act and the affidavit are impermissible." In his affidavit Pierce mentions the events that took place as much as four years before the preparation of the affidavit in February of 1980. The DC 3 plane landed in Carrollton, Georgia in 1976. Appellant called Forrest Roberts in the year 1978. Even if those events had any connection with the Appellant, and on the face of

the affidavit there is nothing to indicate this is the case, those events were far removed in time from that which is necessary to support a determination of probable cause. The information is stale.

When the statements found on pages 2, 3, 4, 5 and 6 of Pierce's affidavit are striken because of the infirmities noted above, the remaining statements are insufficient to establish probable cause. The statements on pages 1, 7, 8 and 9 of the affidavit do not set out facts showing specified crimes or a series of related patterns of criminal conduct such that a reasonable man would believe Appellant was using his phone in a criminal conspiracy. See and compare affidavit in United States v. Armocida, 515 F.2d 29 (3rd Cir. 1975), cert. denied 423 U.S. 858. Unlike the case of Dismuke v. State, 154 Ga. App. 188, 262 S.E.2d 490 (1979) there is nothing remaining in the affidavit except isolated statements having no connection to Petitioner's use of his phone.

III. This Court should grant certiorari to consider whether the Indictment herein should have been dismissed due to the flagrantly unlawful

investigative techniques of the Cobb County Georgia District Attorney's Office and Police Department.

In United State v. Russell, 411 U.S. 423 (1973), the Court recognized that:

> "We may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principals would absolutely bar the Government from invoking judicial process to obtain a conviction." Id at 431, 432.

Recently the Georgia Court of Appeals in reviewing the conduct of the District Attorney's Office of Cobb County, Georgia recognized that the remedy of dismissal may be proper under certain situations. Caudell v. State, 157 Ga. App. 415, 277 S.E.2d 773 (1981) In the case at bar the Trial Judge addressed the "Ike Smathers" subpoena as follows:

> "It is going to be difficult to fashion some type of remedy that will put an end to the Ike Smathers subpoenas situation that will pass on a message to them they have got to quit doing it." MT Vol. III, p. 1474.

This Court can send that message to law enforcement officials by reversing Appellant's conviction. This court which should not allow blatant

governmental misconduct to be condoned and rewarded by allowing illegally seized evidence and the fruits thereof to be used as evidence against an individual. As Justice Brandeis said in his famous dissenting opinion in Olmstead v. United States, 277 U.S. 438, 471-485 (1928):

> "Decency, security and liberty alike demand that government officials should be subjected to the same rules of conduct that are commands to the citizens. Our government is a potent, omni-present teacher for good or for ill. It teaches the whole people by its example. Crime is contagious. If the government invites every man to become a law unto himself, it invites anarchy. To declare that in the administration of the criminal law the end justifies the means, to declare that the government may commit crimes in order to secure the conviction of a private criminal would bring terrible retribution." Id at 45.

CONCLUSION

For any one or all of the aforesaid reasons, Petitioner prays that the Petition for Writ of Certiorari be granted to review the judgments and opinions of the Court of the State of Georgia below.

Respectfully submitted,

LAW OFFICES OF EDWIN MARGER

By: _____
Edwin Marger

By: _____
Robert O. Davies

161 Ga. App. 763
STATE of Georgia, Appellee
v.
FRANK JOSEPH SACCHINELLI, Appellant
No. 63077 and 63078
Supreme Court of Georgia
March 9, 1982
Rehearing Denied March 23, 1982
Application for Certiorari Denied April 21, 1982
Application for Rehearing Denied May 18, 1982

SHULMAN, Presiding Judge

On May 6, 1980, Appellants were arrested at the Bartow County Airport after arriving there in a small airplane. Seized at the time of the arrests were the aircraft, twenty-nine $100 bills, and 995 pounds of marijuana. In Cases No. 63077 and No. 63079, Appellants seek reversal of their subsequent convictions for possession of marijuana with intent to distribute. In Case No. 63078, Sacchinelli seeks reversal of the order of the Trial Court condemning the airplane and the money pursuant to a libel filed under the provisions of Code Ann. § 79A-828.

1. Both Appellants filed motions to dismiss and motions to suppress all the evidence seized on the night of their arrests. The basis of those motions was certain alleged illegalities in the course of the investigation which led law enforcement agents to the Bartow County Airport. The primary complaint concerning the conduct of the investigation involves the use of a sham subpoena to seize messages taken for Sacchinelli by a telephone message service with which Sacchinelli had contracted. In addition, both Appellants argue that an affidavit submitted in support of a petition for an electronic surveillance (wiretap) warrant contained deliberately false statements.

Our review of the record reveals that Appellants' objections to the investigatory methods of the Cobb County Police are apparently well founded. It appears that the Cobb County Police used subpoenas issued in false names and containing language which

appears likely to intimidate witnesses into remaining silent about the receipt of such subpoenas. It further appears from the record that some of the statements in the affidavit submitted in support of the request for a wiretap warrant were false; whether they were deliberately false is not so clear. However, the misconduct of the Cobb County Police and the apparent involvement of the Cobb County District Attorney in that misconduct, though reprehensible, do not require a reversal of Appellants' convictions. The reason for our decision is the same reason articulated by the Trial Judge; there is sufficient evidence to warrant a conclusion that the arrest of Appellants and the seizure of the contraband stemmed from independent sources and was not tainted by the dubious methods of the Cobb County authorities. See Wong Sun v. U.S., 371 U.S. 471 (83 S.C. 407, 9 L.E2d 441). Although there is evidence to support Appellants' argument that their arrest stemmed directly from the information gained through an abuse of the subpoena power and by a wiretap based on allegedly false swearing, there is also sufficient evidence from which the Trial Judge could conclude, as the Trial Judge in this case did conclude, that there were separate and untainted sources of information which could and did lead the police to Appellants. In a Motion to Suppress, the Trial Court is the finder of fact and its findings will not be disturbed unless clearly erroneous. McDonald v. State, 156 Ga.App. 143, 146 (1) (273 S.E.2d 881). We conclude, therefore, that since there was evidence from which the Trial Court could find that the arrest of Appellants was not tainted by the alleged police misconduct, there was no error in the denial of Appellants' Motions to Suppress the evidence seized at the Bartow County Airport. For the same reason, we find no error in the Trial Court's refusal to dismiss the Indictments for governmental misconduct.

2. Both Appellants have enumerated as error the Trial Court's refusal to give a requested jury instruction on the lesser offense of possession of less than one ounce of marijuana. The request was based on evidence that a small quantity of marijuana seeds was found in the aircraft on which Appellants arrived at the Bartow County Airport. Under all the circumstances of these cases, we conclude that the evidence did not require that the requested charge be given.

The evidence showed that the law enforcement agents involved in these cases gathered at the airport because they suspected that Appellants might arrive with a quantity of contraband. After darkness fell, the airplane with Appellants aboard landed. It taxied to the end of the runway and stopped. The law enforcement agents watching were unable to ascertain what was transpiring at the end of the runway. Then, the airplance taxied to the hanger area, whereupon Appellants were arrested. An agent dispatched to the end of the runway reported that there had appeared there a pile of bales of marijuana, a pile that had not existed before nightfall. At trial the State introduced, as part of the circumstantial evidence that Appellant had placed the bales of marijuana at the end of the runway, evidence that less than one ounce of marijuana seeds were swept from the floor of the aircraft. We cannot agree with Appellants that that evidence authorized a jury charge on the lesser offense of possession of one ounce of marijuana. If the evidence of the smaller quantity was submitted as evidence of another crime, it was inadmissible. Dunkum v. State, 138 Ga. App. 321 (10) (226 S.E.2d 133). Here, however, the evidence was submitted solely for the purpose of linking Appellants to the large pile of marijuana; it cannot be seen merely as evidence of a lesser crime. If one believes that the marijuana seeds came from the aircraft on which Appellants arrived, the same aircraft which sat at the end of the runway were the 995 pounds of marijuana were found, then the conclusion that Appellants placed the large pile of marijuana at the end of the runway is inescapable. There was no error in denying Appellants' requested charge.

3. Appellants made a timely challenge to the composition of the Grand Jury list and the petit jury list in Bartow County. They enumerate as error the Trial Court's overruling of their challenge to the petit jury list. We find no such error.

Although Appellants have shown that there is a numerical discrepancy between the percentage of the age-eligible population which is female and the percentage of the jury list which is female, they did not make out a prima facie case of unconstitutional underrepresentation of women on the jury list. See Pass v. Caldwell, 231 Ga. 192 (1) (200 S.E.2d 720). Here, as in Cochran v. State, 155 Ga. App. 418 (271

S.E.2d 864), Appellants showed no more than the numerical disparity. There was no showing at all that the primary source of the jury list, the voter registration list, was gender biased. Indeed, the evidence adduced on the hearing of Appellants' challenge demonstrated that the jury commissioners had made a good faith effort to meet the responsibility laid upon them by Code Ann. § 59-106: to "select a fairly representative cross section of the intelligent and upright citizens of the county . . . "

4. While the law enforcement agents were detaining Appellants long enough to check the far end of the runway, one officer frisked Appellant Parker. That officer testified that he felt a large, hard metallic object in Parker's pocket and removed it to ascertain whether it was a weapon. Parker insists that the frisk was not warranted by the circumstances and that the object should have been suppressed. The importance of this issue to Parker is that the object was the cap of a removable aviation fuel tank found at the end of the runway with the 995 pounds of marijuana and, thus, provided a very concrete link between Parker and the contraband.

We hold without hesitation that the Trial Court was correct in refusing to exlude the cap from evidence. There were certainly circumstances from which the officer could conclude that criminal activity was afoot and the situation was such that the officer might very reasonably have been concerned that weapons were present. The holding of the U.S. Supreme Court in Terry v. Ohio, 392 U.S. 1 (88 S.C. 1868, 20 L.E2d 889), authorized the very limited intrusion made by the officer in this case.

5. Following the guilty verdicts, the Trial Court verbally announced Sacchinelli's sentence to be 10 years, 9 to serve and 1 on probation, the probation being conditioned on payment of a $10,000.00 fine. As reduced to writing and signed by the Trial Judge, the sentence provided for the same term, but permitted Sacchinelli to enter upon probation immediatley upon his release from prison and to pay his fine in monthly payments of $1,000.00, commencing 30 days after his release from prison. The next day, a new sentence was filed, purporting to be an amendment to the first. The new sentence provided that the fine had to be paid in lump sum as a condition precedent to probation and added the

condition that Sacchinelli not operate an aircraft in Georgia. The entry of that second sentence is enumerated as error, and we are compelled to agree with Sacchinelli's argument on this issue.

" 'Once a person has entered upon the execution of his sentence, the Court is without power to change it by increasing the punishment. This is considered a violation of the Fifth Amendment prohibition against double punishment or jeopardy. (Cits.)' " Brown v. Moody, 243 Ga. 473 474 (254 S.E.2d 853). As it was in Brown, the next-day amendment of the sentence was erroneous. The Trial Court is directed to vacate the second sentence and reinstate the first.

6. In Case No. 63078, Sacchinelli raises two objections to the forfeiture of the aircraft seized at the time of his arrest. The first objection concerns the Trial Court's dismissal of the motion to intervene filed by a party asserting an interest in the aircraft. The Trial Court initially permitted the intervention, but later dismissed after the intervenor failed to appear at a hearing. However, the merits of the intervention and of the dismissal aside, we fail to find any standing in Sacchinelli to raise this objection. Sacchinelli has consistently denied ownership of the aircraft. If, as he asserts, he had no ownership interest, we fail to see how he is prejudiced by the Trial Court's action, including the forfeiture.

Sacchinelli's second objection is that the evidence did not warrant the forfeiture. Under the provisions of Ga. Code Ann. § 79A-828, an aircraft is subject to forfeiture if it has been used to transport marijuana. The evidence in this case is overwhelming that the aircraft was so used. Also forfeited was $2,900.00 found on Sacchinelli's person. The circumstantial evidence in this case was sufficient to authorize the Trial Judge to conclude as he did that the funds were present to facilitate the drug transaction in which Appellants were involved at the time of their arrest. The requirements of the statute were met and there was no error in the forfeiture.

Judgments affirmed in Cases No. 63078 and No. 63079. Judgment affirmed with direction in Case No. 63077. Birdson and Sognier, J.J., concur.

MR. CRAWFORD:

actually apprehended and stopped them?

MR. PHILLIPS:

A Any additional?

Q Yes, sir.

A Not that I recall.

Q All right, did you at any later date receive any information from Hallman?

A. Yes, sir, After I had detained the suspects and patted Mr. Sacchinelli down for a weapon I left him in the presence of the Customs Officers and members of the Bartow County Sheriff's Office. They were there at the plane with Mr. Sacchinelli and Mr. Parker. I walked back up to the position beside sunbelt Helicopters approximately a hundred and fifty yards away, and I got back in radio communication with Detective Hallman, and he advised me of the suspects -- that they had deposited narcotics off the side of the runway, and I walked back down and placed them under arrest.

Q Do you know what the time period was from the time you first stopped them, patted them down, until

you went back and arrested them?

A Yes, sir about -- approximately five minutes.

Q Why did you leave the Defendants in the custody of the Customs Agents and walk and call Hallman and then come back?

A Well, I suspected -- The Customs officers was, I believe, John Roberson was talking to Mr. Sacchinelli about the aircraft, his departing the United States and as to the ownership of the

MR. PHILLIPS:

A No, sir.

MR. JENKINS:

Q. That is not something you would have in your case report?

A That I got the information from Mr. Padgett? No, sir, I don't have that in my case report.

Q You don't have anything in your case reports about any confidential informer, is that right?

A That is right.

Q You have nothing about that informant in your case report?

A Not that I recall at this point in time.

Q Is there anything else, any information that was received from this confidential -- It is a confidential informant, isn't it?

A I don't know who the subject is.

Q You don't know who it is?

A No, sir, I don't.

Q Is there anything else you received from that individual by way of Mr. Padgett? Were you told anything else that was received from that individual?

A Well, I'm not sure Mr. Padgett knows who the individual is either. Are you asking me have I got

any information from Mr. Padget from any other individual? How could I distinguish?

Q No, sir, I'm asking you -- You have testified there was some information in your hand the night that Mr. Parker was

MR. JENKINS:

Q Anything else?

MR. PHILLIPS:

A I think I told him to, "Halt" two or three times.

Q Did he keep on moving?

A Yes, he kept on moving. He moved several feet from the first time I told him to halt.

Q Then you told him to halt again?

A Yes, sir.

Q And he did?

A Yes, sir.

Q Did you have your gun pointed at him?

A Yes, sir.

Q Where was Mr. Parker at this time?

A He was inside the aircraft at the pilot's controls.

Q What exactly was done relative to him?

A I told him to put his hands in the air.

Q And how did you speak -- Was the door to the plane open?

A Yes, sir.

Q You just hollered at him, "Put your hands in the air."

A Yes, sir.

Q You pointed your gun over in that direction?

A Yes, sir.

Q Did he comply with that?

A Not immediately.

Q What did he do?

MR. PHILLIPS:

A In my office.

MR. JENKINS:

Q Where is your office?

A Cobb County.

Q You did not bring the inventory list or your file with you today?

A No, sir.

Q What is on the inventory list? What did you find in the airplane?

A We found marijuana residue. We found a coffee thermos with two crumpled rolls of paper in it. We found a notebook with several sheets of paper in it. We found maps in the aircraft.

A What type of maps? Any significant ones?

A I think they are maps of the whole Southeastern United States, Florida, South Florida, the Islands, possibly South Cacas, Columbia, Venezuela.

Q The Carribean Islands?

A Yes.

Q The crumpled paper, did they have any writing on them?

A Yes.

Q Did the note book have writing in it?

A I can't recall if the notebook had writing in it or not. It had paper in it.

Q What else, if anything, did you find in that airplane?

A I found a piece of wood in the airplane, found a part of a gas pump in the airplane.

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(Phillips Testimony Cont'd)

Q What piece of wood? What was it? Just a hunk of wood?

A Just a hunk of wood. It looked like it was part of a tree trunk.

Q A gas pump?

A The nozzle of a gas pump, various refreshments.

Q Food?

A Yeah, food, bottles of grape juice, I believe, empty bottles, cans, cigarettes. I noticed a nozzle on the passenger side for a fuel line.

Q How much marijuana residue?

A A small quantity.

Q Did you save it?

A Yes.

Q Was it bagged separated and marked?

A Yes, sir, it was bagged separately and marked from the area of the plane that it was recovered from at the Crime Lab.

Q Did you conduct this inventory before or after the arrests?

A Before.

Q Did you file an inventory with anybody?

A Yes, sir.

Q Who?

A Property control, Cobb County Police Department.

Q When did you do tht?

A I believe it was May the 7th.

MR. MARGER:

Q This DA's office or Mr. Martin's office?

MR. SISSON:

A The Cobb County's DA office.

Q Who did you secure it form?

A I went to the DA's office on this particular day with the information that I had been supplied and requested that this subpoena be issued.

Q Who did you speak to?

A It would be one of the -- I approached one of the secretaries in the DA's office with this information.

Q Which secretary?

A It has been so long ago I honestly do not remember.

Q Did the secretary issue the subpoena?

A The secretary type the subpoena up.

Q At your direction?

A All I supplied was the information and told her that I need the subpoena.

Q Are you telling me that the verbients used in this was put in by a secretary?

A The way it was worded. I did not sit down and dictate what was to go in this subpoena, no.

Q Who did? Was it one of the Assistant District Attorneys?

A Honestly I don't know.

Q So you remember going to the District Attorney's office, speaking to a secretary and getting this subpoena. Do you --

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(Sisson Testimony Cont'd)

A The secretary returned the subpoena to me.

Q Did she say she had spoken to anybody in the DA's office about it?

A I did not ask her.

Q Was the secretary at the first desk, second desk, third desk?

A I honestly don't remember.

Q Are you sure that Karen Conner did not type the subpoena for you?

A No, she did not type the subpoena for me. At that particular time I was not working in the same office with Karen Conner, that she was working at.

Q Had you ever seen a subpoena before which directed to anyone other than the telephone company and requested them not to disclose the existence for

ninety days to anybody?

A I had not really dealt with serving subpoenas on too many people.

Q Who are you working with in the Sacchinelli case?

A I haven't worked on the Sacchinelli case.

Q Who told you to get the subpoena?

A This information was derived because of the involvement that I had in investigating another case. When I approached Northwest Answering Service I did not have the slightest idea in the world that the information that I was asking initially from Ms. Bryant was on Sacchinelli -- that I would be receiving

set before?

A I don't know that either, sir.

Q You know it was not set before any Judge, do you not, sir? There was no case. There was no case number, there was no file. The reason that this subpoena --

A There was definitely a case that we were working on. There was a reason for the issuance of this subpoena.

Q Are you telling the Court that you have a right to issue a subpoena?

A I did not issue the subpoena.

Q Are you telling the Court that there is a subpoena that can be issued that is not returnable either before a Grand Jury or before a Judge?

A No, I'm not saying either.

Q Well, you know at the time nobody had authority to issue this subpoena, did you not?

A I have stated how I got the subpoena.

Q So it is the DA's fault?

A I'm not saying that.

Q And you knew Ike Smathers was not a person who was involved in any case or any case number.

A I knew Ike Smathers did not exist, yes.

Q And you knew the case did not exist as far as the Courts were concerned, did you not?

A I fail to understand what you are getting at.

on any other citizen of this country?

A Have I issued?

Q Yes, how many have you gotten and delivered?

A I have not issued any.

Q Does Mr. Pierce know about this when this went out?

A No.

Q What did you do with the information that you got? Where is it now?

A The information that I obtained was turned over to the special investigations section of the Cobb County Police Department.

Q Was it used in any event in regard to Mr. Sacchinelli, to your knowledge?

A To my knowledge, I can't state. I do not know.

Q But you turned it over to whoever was dealing with the normal routine of drug and smuggling cases in your agency?

A Yes.

Q Would you issue another subpoena like that again, sir, right now?

A No.

Q Why not?

A Basically, the Ike Smathers --

Q Because you know it is an illegal subpoena, don't you?

A I don't know, basically, I don't know whether it is illegal or not. Any subpoena that I would issue at this point

MR. MARTIN: Again, the same. Can you limit that?

Q (by Mr. Marger) From Cobb County?

MR. MARTIN: Thank you.

A At the time that this subpoena was issued, basically a group was under the direction of Tom Charron.

Q (by Mr. Marger) You are not telling me that Mr. Charron personally authorized the issuance of the supboena like this, are you? Is that what you are saying?

A I am saying that I went to the DA's office, supplied them with the information, and a subpoena was supplied to me.

Q Did Tom Charron know anything about the issuance of this subpoena to your knowledge?

A Not to my knowledge. I did not see him okay the subpoena or --

Q Did you walk into that office and wait for the subpoena to be typed?

A I walked in the office, supplied the information.

Q You supplied the name of the case, did you not, The State of Georgia versus Ike Smathers?

A No, I did not.

Q Where did that come from? The secretary?

A It may have come from the secretary, but I did not ask for a State of Georgia versus Ike Smathers subpoena.

Q As a result of this subpoena, whoever issued it, you

MS. CONNER:

A Yes, sir.

MR. MARGER:

Q Ma'am, let me switch these. I show you Defendant's Exhibit marked D-1 and ask you what that is if you know.

A It is a subpoena.

Q Have you ever seen it before?

A I can't say that I have. I probably have.

Q If it was the testimony that Mr. Phillips that you prepared that subpoena would he be accurate?

A According to this date, on the 27th of September, 1979, I don't believe that I did.

Q You say you did not prepare it then?

A No, sir, I don't believe that I did.

Q Just one moment. I'm sorry. I showed you the wrong subpoena.

MR. MARGER: May I have D2, please?

Q (by Mr. Marger) Ma'am, I show you Defendant's Exhibit D-2 and ask you what that is if you know.

A A subpoena.

Q Do you recognize that subpoena?

A Yes, sir.

Q Did you prepare that subpoena?

A Yes

Q Under whose authority?

A District Attorney of Cobb County.

Q Who gave you specific information to prepare that

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subpoena?

A Mr. Tom Charron.

Q You called him and asked him if you might prepare it?

A I have his permission to do -- in fact, his instructions to issue these subpoenas.

Q Who is Ike Smathers?

A John Doe.

Q And in what case was that subpoena issued in?

A In reference to Mr. Sacchinelli.

Q Is that subpoena to the Grand Jury of Cobb County?

A That I don't know.

Q Is that subpoena issued in regard to an ongoing numbered case in Cobb County?

A I don't know what you mean by numbered case.

Q Well, is that actually a case in which information has been filed, an Indictment filed against Mr. Sacchinelli or anybody else?

A It is an ongoing investigation.

Q So that is an investigative subpoena?

A Yes.

Q And you had authority delegated to you from Mr. Tom Charon in regard to Mr. Sacchinelli?

A In regard to subpoenas.

Q So that if you are investigating Mr. Jones or Mr. Smith or whoever you could prepare such a subpoena under the

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authority of the District Attorney's office?

A Yes, sir.

Q And in this case you prepared this subpoena?

A Yes, sir.

Q At whose request?

A At Sgt. Phillips' request.

Q Who dictated to you, if anybody, the paragraph number 3. "You are not to disclose the existance of this request for a period of ninety days from the date of this request."

A It was not dictated.

Q And where did you get that language?

A From the District Attorney's office.

Q He told you to use that?

A Yes.

Q Mr. Charon did?

A Yes, sir.

Q And who gave you permission or told you to include: "Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law?"

A The District Attorney, Mr. Tom Charon.

Q Where did you secure the date of that hearing, the date of the hearing shown on the subpoena?

A We normally give a week to ten days to the companies to receive the information -- to prepare the information.

Q Did you give a week to ten days in this case?

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A No, sir.

Q How many days did you give?

A Two.

Q Now, that case was set for Courtroom "B" on the 30th day of May at 3:00 o'clock?

A Yes, sir.

Q Was the hearing on that date?

A I do not know.

Q Did you advise the Clerk of the Court that you had issued a subpoena for that date?

A I gave the District Attorney's office copies of all subpoenas that we issue.

Q How did you select the date upon which the hearing will be held?

A I don't do that.

Q Where did you get the date from?

A I just make it up.

Q Just make up a date.

A No, that's incorrect. I don't make up a date. I --depending on how soon we tell we need the information, we choose a date, and we try to be fair to give enough time for the information to be received.

Q So that a subpoena served, for example, at 9:00 o'clock on the date when you have the date set for 9:30 the same day that, no doubt, would be fair?

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A Would you repeat the question?

Q Yes, ma'am. If a subpoena were served by the police department at 9:00 a.m. on the day that the hearing was set for 9:30 a.m. the same day, that would be fair?

A Depending on the circumstances.

Q In other words, a half hour notice would be depending upon what circumstances?

A How far away the company was or where the information was coming. I would not assume that to

be fair though.

Q You would not assume that to be fair?

A No, not thirty minutes.

Q But two days is fair?

A Sure.

Q Now I ask you again what you do once you put a date on the subpoena; for example, in D-2 you had a date there. Who else did you notify of that date other than the person that was the recipient of the subpoena?

A The District Attorney's office receives a copy.

Q Received a copy of the subpoena?

A Yes.

Q Who did you send the copy to?

A Whoever picks up the mail and transports it over to the District Attorney's office.

Q So you prepare a second copy, you put it in a box?

A (Nods head yes).

MR. CUSTER:

was not to disclose the existence of the request to anybody, and she assumed anybody meant her lawyer.

MR. MARGER:

Q Why did she contact you sixty days later when it says ninety days?

A I think she had become concerned about it. She and I had had some conversations. I had represented the lady in various things for -- I don't know -- twelve, fifteen years, maybe longer, and we have had some discussions concerning confidentiality of her records and in her role, and we discussed that as a result of that conversation, and I think that is probably what prompted her coming to see me anyway.

Q Did she indicate to you any other reason why she had not spoken with you other than the fact that it said in there that she should not tell anybody?

A Well, I think basically that was it. I think probably she was somewhat frightened and impressed with the -- shall we say the majesty of the law and

the effect of a subpoena issuing in a case.

Q Now I shall you Defendant's Exhibit marked D-2 and ask you, sir, if you have ever seen the Exhibit marked D-2 before?

A Yes, sir.

Q And upon what occasion did you see that?

A As a result of the first conversation, the one in November, I advised Ms. Bryant that if she received any further

MR. CUSTER:

was advised that there was none. I then went to the District Attorney's office. I believe I saw Mr. Martin there and said that we were responding. I didn't think that, apparently, there was no hearing and that I would be objecting to anything and asked him if there was a hearing, and apparently there was not.

MR. MARGER:

Q Did Mr. Martin indicate any reason why there wasn't a hearing?

A No, not really.

Q Did he display any emotion whatsoever about this situation?

A I received a pleasant smile from him. I don't know if it was just friendliness or what, but I've had a very pleasant relationship with him. It could have been simply that. Then I just took everything and went back to my office and forgot about it.

Q And never again was the evidence requested?

A Not in this context, no.

Q Did you ever receive another subpoena in the Ike Smathers case?

A Yes.

Q And do you happen to have that subpoena with you, sir?

A Yes.

Q Before I get into this one, Mr. Custer, I show you two originals which you brought to me and ask you to look at

MS. BRYAN:

A A subpoena.

MR. MARGER:

Q When is the first time that you saw the original of that subpoena if you can recall?

A When it was served on me on the 27th day of September, 1979.

Q Do you know an Ike Smathers?

A No, I do not.

Q Had you ever heard of Ike Smathers prior to this 27th day of September, 1979?

A No, I had not.

Q In regard to the contents of that subpoena and the people named therein, had you ever, prior to the time that you were served with that subpoena, spoken with any police officer, any governmental official, any member of the District Attorney's office or anyone else with regard to the contents of that subpoena?

A No, I had not.

Q Had anybody, prior to delivering that subpoena to you, requested any of the information requested therein?

A No.

Q Would you tell us what happened at the place and time that the subpoena was served upon you?

A Well, I was served the subpoena early the morning of the 27th. I guess around 9:00 o'clock or a few minutes after, and, of course, due to what it said and assuming that

MS. BRYAN:

many, many customers that had nothing to do with the persons' names on the subpoena.

MR. MARTIN:

Q You gave them those?

A They -- When you say give them, I didn't think I had any choice. I didn't just say, "Here is all these cards." They went through and pulled what they felt that they needed.

Q Did the officers push you aside and say, "We are taking over."

A No, they did not. But I assumed this is, you know, I complied with what they said as I felt it should be.

Q Okay, when did you comply with it timewise? I believe you stated it was about 9:00 o'clock when it was served on you.

A Well, they had to bring back someone -- a female officer to go through these records, I believe, when they saw how much it entailed.

Q Did they bring the female officer back at your request or their request or on mutual agreement?

A No. I told him that there was so much involved

that I did not have the time to pull all those records and that if they wanted to stay in the office and go through the stuff themselves, fine.

Q Do you know Captain Jimmy Maxwell?

A I believe that he served a second subpoena on me.

Q Second subponea? Would you describe a second subpoena?

A This one. (Indicating).

MR. MARTIN:

of you were not to disclose this for ninety days?

MS. BRYAN:

A I was upset after they listed my name in here after the things I was told involved these particular people by Mr. Sisson.

Q Yes, ma'am. And you told them about your being upset?

A (Nods head yes).

Q But did you specifically question them, do you recall, about the paragraph that says you are not to disclose the existence of this request for a period of ninety days from the date of this request?

A That was read off to me from the subpoena.

Q Read off to you?

A Yes.

Q You had no questions about that?

A No, I had no questions.

Q There was no exaplanation offered?

A By them to me?

Q Yes, ma'am.

A The discussion of that and so forth is just what it said due to evidence being built and so forth not

to discuss it, I guess so as not to give anybody wind of what was going on.

Q They never told you not to discuss it with Mr. Custer or your attorney?

A They said anyone.

MS. BRYAN:

A Ready.

MR. MARTIN:

Q Please, at anytime you need anything else just interrupt me. This second subpeona, when did you notify Mr. Custer of your having been served with this subpoena, the second subpoena which I --

A The second subpoena?

Q D-2.

A The minute I got it.

Q All right, did you advise the officers that you were contacting your attorney?

A Yes, I did.

Q What, if anything, was their response?

A Their response was -- To my telling them?

Q Yes.

A I told them I wanted to call my attorney, and they said that, well, that wouldn't be necessary, they didn't think that would be necessary because, in fact, I wasn't being put into any position that I should be concerned about.

Q And who told you that?

A I'm not sure which one of the officers told me that.

Q It was one of two?

A Yes, I then called my attorney and he was in Court. I talked with his secretary and told her the situation, and she said, "Well, just don't do anything," and I told the detectives that they would -- that I would not give them

MS. BRYAN:

up his messages, but only Mr. Sacchinelli could let them know what his code is. That is the purpose of coding.

MR. MARGER:

Q Now, is there any question in your mind as to why you gave these messages to Mr. Sisson and the other people from Cobb County?

A I didn't think I had a choice.

Q Because of that subpoena?

A Yes.

MR. MARGER: Thank you, ma'am.

RE-CROSS EXAMINATION: By Mr. Martin

Q But you do not today recall what period of time Mr. Sacchinelli paid you for his services, is that correct?

A No, I do not.

Q You don't know whether it was --

A I'm guessing three or four months.

Q Okay, but you don't know whether it was January or July?

A No, I don't. I'm sorry.

Q And on what number was he paying you?

A 427-6180.

Q And what number did the agents look at for messages?

A 427-0253 and 427-6180.

Q Their main interest was on 427-0253?

A Correct.

MR. MARGER:

Q Now in that regard are you used to seeing subpoenas of this sort issued by your department or otherwise?

MR. HIGHTOWER:

A I know there have been subpoenas of that nature issued in the past, yes.

Q Have you condoned the use of those subpoenas?

A I don't know what you mean by condone. All I know there is no impropriety involved in it. It is basically a security measure in connection with an investigation.

Q So you have absolutely no compunction to have your office use this type subpoena from this day forward?

A No, sir, that is not exactly the case. We have reviewed the situation, in fact, about two or three months ago I think, and, you know, in instances where I think there is an absolute need for security we might still issue some type of John Doe subpoena, but basically any other issuance they are instructed, you know, to use the proper names.

Q If you have a case under investigation can you

deal with the Grand Jury, or is that insufficient security?

A Well, sir, when I talk about security, Mr. Marger, I am talking about from the standpoint -- Of course, a subpoena is in connection with some other entity, whether it be -- I think maybe in this case -- I don't remember from looking at it --maybe Southern Bell Telephone Company or something like the answering service, and if the investigation is a sensitive investigation or major investigation and you have no way of

MR. PIERCE:

A On occasion, yes.

MR. MARGER:

Q Did you have occasion to meet any other members of the family?

A No, sir.

Q Did you ever meet Pam Sacchinelli?

A No.

Q You went to her funeral in Florida, did you not?

A No, sir.

Q Now you are familiar with a subpoena that was issued September 27, 1979, marked as Defendant's Exhibit Number 1.

A This is the first time I've seen it.

Q Were you apprised of its existence prior to coming here?

A Of this subpoena?

Q Yes.

A No, sir, I was not. Not that I can recall.

Q Have you ever seen this document marked D-2?

A No, sir, not that I can recall.

Q Have you ever heard about that subpoena?

A Not that I can recall, no, sir.

Q Did Mr. Sisson ever turn over a file on Frank Sacchinelli to you?

A I saw a report.

Q From whom?

A I believe Mr. Sisson.

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Q A report on Sacchinelli?

A There were some reports regarding some phone numbers, phone messages.

Q What did the report consist of?

A Roughly about -- I think maybe two pages.

Q Were you ever in an automobile with Pam Sacchinelli?

A No, sir, I never seen Pam Sacchinelli.

Q Were you ever in an automobile with Mrs. Pam Sachinelli that was stopped by a police officer?

A No, sir, I was not.

Q Did you ever speak to a police officer in her behalf?

A No,sir, I have not.

Q Now in this file that was shown by Mr. Sisson did it contain a list of telephone numbers?

A Yes, sir, there was a phone number listed on there.

Q Did it contain copies of messages either to or from Mr. Sacchinelli?

A I believe there might have been some on there.

Q Now at the time that you saw the file containing whatever was in it, were you apprised by Mr. Sisson that the materials that were in that file were a result of information given you by an answering service?

A I believe there was some discussion, yes, sir.

Q Well, try and remember the discussion, please, Mr. Pierce.

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A I don't recall word for word. I know -- I believe Sisson related to me where he got the information.

Q Where had he got the information from?

A As far as I knew just from an answering service.

Q Now what happened to those telephone numbers and messages if you know?

A If I know?

Q Yes.

A I don't really understand. Was there an investigation done on them or something like that?

Q Did you continue to investigate Mr. Sacchinelli, or Mr. Sisson just give you these documents in

passing?

A Yes, sir, I continued to investigate. It was just, more or less, was in passing.

Q What did you do, if anything, with the messages and with the telephone calls?

A I retained them and looked over them, looked through them.

Q What did you do with them, if anything?

A Really nothing that I can recall right now.

Q Did you ever check any of the telephone numbers?

A Yes, I believe they were all checked.

Q Who did the physical checking? Who did it? Did you?

A I believe I might have done some. I think other members of intelligence did some of them.

MR. MARGER:

Q Yes.

MR. PIERCE:

A Cocaine overdose.

Q Did you ever lose any cocaine?

A Did I ever lose any?

Q Yes, sir.

A Yes, sir, there was some stolen.

Q Is that the same cocaine that was used by Pam Sacchinelli?

A No, sir, it was not.

Q After you spoke to Sgt. Sisson and got the information, please describe to the Court, if you would, please who did the physical investigation of the specific telephone numbers that were on the list taken from the answering service?

A The best that I can remember I believe I might have done some of them. Maybe Karen Conner might have done some. Sgt. Phillips might have done some.

Q Describe how you did whatever investigation you did from those messages and the telephone numbers?

A To the best that I can remember I believe that

there were numbers wrote out to the different police departments where, say that phone number -- area code number was, asking who the phone was listed to, things of that nature.

Q Do you have some sort of a book -- called a red book, perhaps, in which you can take a telephone number and get a street address and the person to who that telephone is listed?

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A There are some books like that in existence, yes.

Q Did you ever use them?

A I've never really used them. I don't believe they are that accurate personally.

Q How did you find out who actually was the person to whom the specific telephone numbers were listed?

A On out-of-state numbers which, I believe, that either, say, Sgt. Phillips or Ms. Conner wrote letters to agencies within that jurisdiction and asked them to inquire as to who those numbers were listed to.

Q Now did those agencies respond?

A Yes, sir.

Q And in addition to responses as to the owners of the telephones did they also give you any information

as to who those persons were in regard to the criminal justice system?

A Yes, sir, I believe they responded if they had a criminal record or anything.

Q So that from those telephone numbers you got the name of the person to whom the phone was listed and, if applicable, any criminal record that they might have had?

A Yes, if they had any, yes.

Q Did that usually come to you in writing or by telephone?

A Sometimes in writing; sometimes by telephone.

Q Where are the letters or copies that you sent to the

MR. MARGER:

Q And the affidavit was drawn up by you pursuant to the information you had gathered from the various sources, the telephone responses from other police departments and generlly all of the available information that you had; is that not correct, sir?

MR. PIERCE:

A It was wrote up with all the information that I had, yes, sir.

Q Now, the contents of the affidavit which you gave to the Court for the wiretap was the best information you had at that time, was it not?

A Yes, sir.

Q I show you Defendant's Exhibit Number D-11 and ask you if you know what that document is.

A (WHEREUPON WITNESS EXAMINES DOCUMENT). Yes, sir, this is the affidavit for wiretapping.

Q Is that the affidavit which you signed?

A Yes, sir, I recall signing the affidavit.

Q Did you speak to Martin Dartus prior to the time of your signing it?

A Yes, I talked with Mr. Dartus.

Q Was he, in fact, an assistant DA at that time?

A Yes, sir, he was.

Q Now, on page three of the affidavit you stated Mr. Sacchinelli registered at the Ramada Inn in Rooms 206 and 207 on October 31st of 1978, and that there were calls billed to Mr. Sacchinelli.

MR. PIERCE:

say is I have not seen any of this since then. I don't recall any of this. I have not discussed the case with anybody. I have not seen any reports or anything since that time. I'm trying to testify from memory.

MR. MARGER:

Q You said you did not recognize Defendant's Exhibit Number 1 the subpoena of September of 19 --

A No, sir, I did not.

Q But didn't you have anything to do with any subpoenas? Didn't you have anything to do with Ike Smathers?

A Yes, sir, I believe my name is listed on some subpoenas, yes, sir.

Q As a matter of fact, didn't you serve Ike Smathers subpoenas on September 21st, November 15, January 15, January 11th of 1979, and April the 28th of 1980 and 10/30 --October 30th of 1978, Ike Smathers subpoenas?

A It is very possible, yes.

Q Now in regard to this particular case did you not serve Ike Smathers subpoenas concerning Mr.

Sacchinelli on September 21st, 1979?

A I know I served some subpoenas. The exact dates --

Q You and Ms. Conner on the telephone company?

A Yes.

Q How about November 15th, 1979?

A As I stated earlier, Mr. Marger, I know I did. I don't recall the exact dates.

MR. MARGER: Your Honor, rather than take the Court's time at this particular time we would like to go through these because some of these may have relevance. I'm not sure. I haven't had a chance -- We went through the other papers with Mr. McDaniel and we'll either offer them into evidence or return them to Mr. McDaniel.

THE COURT: All right, then, with regard to Mr. McDaniel --

MR. MARGER: There are two questions --

THE COURT: As far as him being the custodian of these records, they are authentic copies of his records, no problem. The only question is whether they are relevant, right?

MR. MARGER: Right.

MR. MARTIN: As to the packet that was previously marked D-13 that's about the only --

MR. MARGER: We'll withdraw for the purposes of this proffer, Your Honor, 13, and may wish to ask the Court to reconsider.

Q (by Mr. Marger) If I may, Mr. McDaniel, I would like to ask two questions. In regard to Ike Smathers

is this something that is strictly Cobb County?

MR. McDANIEL:

A To the best of my recollection it is.

Q Have you discussed with the District Attorney's office

MR. MARTIN:

Q Well, you're the expert.

MR. WILLIAM RILEY:

A If you'll give me the book I'll read you the word.

MR. MARTIN: This is all I have

MR. MARGER: We move he be admitted as an expert in the field of wiretap or electronic surveillance in regard to 18 U.S.C. 2518 and is applicable under the Georgia Statute.

THE COURT: I will let him testify about electronic surveillance and his connection with 18 U.S.C. 2518, but limit him with regard to the State of Georgia.

CONTINUED DIRECT EXAMINATION: By Mr. Marger

Q You have already stated your name and your employment, sir. I show you the exhibit marked 4-C, and ask you whether you have ever seen a copy of that, sir?

MR. RILEY:

A Yes, sir, at approximately one week ago.

Q And, how did you come by that copy?

A Ms. Finkel mailed a copy to me at my office--excuse me, to my home in Miami, Florida.

Q In reading through that, did you recognize any portions of the affidavit as being a case or cases in which you, yourself had been involved?

A Yes, sir.

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Q And, what paragraphs, if any, did you recognize immediately upon reading?

A Beginning on the unnumbered first page of the affidavit, which would be paragraph one, two, three--it would be paragraph three of the first page and continuing through page two in its entirety and through paragraph one, two, three and four on page three.

Q Now, I take it that somewhere along the line you knew a man by the name of Martin Dartus?

A Yes, sir, I have known him for over ten (10) years.

Q On page two of the affidavit, as shown in 4-C, there is a discussion about the Florida Attorney General's Organized Crime Task Force. Is there, to your knowledge, any such organization in Florida?

A Not under the Attorney General's Office, no, sir.

Q Is there or has there ever been an Assistant State Attorney by the name of Martin Dartus?

A Not that I know. The Martin Dartus I know never has been an attorney.

Q You do know a Martin Dartus that was an investigator?

A Yes, sir.

Q And, Martin Dartus did work with you in regard--

MR. MARTIN: I object to the leading nature of the question.

THE COURT: I sustain the objection.

Q Did you ever work with Mr. Dartus on any case reflected

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in this affidavit?

A Yes, sir.

Q Which case or cases?

A It is the case with regard to a Mr. Frank Joseph Sacchinelli and related to October of '78.

Q In paragraph three of this affidavit there is a statement, under oath, that Mr. Sacchinelli purchased one-half of five (5) kelos of cocaine. To your

knowledge, were you involved in the investigation of the accusation against Mr. Sacchinelli, as to the possibility of him purchasing cocaine?

A Yes, I was the co-leader investigator and I was the supervising officer with regard to this portion.

Q Did you work with Investigator Dartus?

A Yes, he was the other investigator.

Q Was he an attorney at that time?

A No, sir.

Q Was he ever an attorney to your knowledge?

A He ain't never been an attorney.

Q During the period of time you worked with Mr. Dartus, did you have all the information available to him, available to you?

A Yes, sir. The information was normally available to me first and Mr. Dartus second.

Q Based on the investigation upon which you and Mr. Dartus worked together, did you ever find that Mr. Sacchinelli

purchased one-half of five kelos of cocaine? I assume that's two and one-half kelos of cocaine on November 1, 1978?

A No, sir, not to my knowledge. If he had he would have been arrested.

Q If Mr. Dartus knew that he had purchased cocaine, would he have arrested him?

A Either Mr. Dartus or myself, or we would have had him set up in such a fashion that Mr. Sacchinelli would have been arrested. The day that Mr. Sacchinelli arrived in Miami I came to the location here, which is not referred to, on the first of November. Mr. Dartus was not even present that day. He was at a meeting.

Q Now, have you ever discussed this case with Mr. Dartus?

A The Sacchinelli case, yes. With regard to what's in the affidavit, no.

Q If--based upon your knowledge of the case of Mr. Dartus and this affidavit,--do you believe this affidavit indicates the truth regarding Mr. Sacchinelli?

A From my own knowledge, no. What Mr. Dartus may have said, I cannot confirm nor deny what he may have told someone.

Q Mr. Dartus is available to the District Attorney's Office, is he not?

A Yes, sir, I believe he has been available since November 1, 1978.

Q He is presently out of the State of Georgia?

A He is retired, yes, sir.

Q Now, are you stating to this Court, under oath, that you had knowledge of Mr. Sacchinelli's activities on November 1?

A Yes, sir.

Q That you had him under surveillance?

A Yes, sir, under physical surveillance and under electronic surveillance.

Q And that you know, from your own knowledge, that at least on November 1, 1978, he did not purchase any cocaine that Mr. Dartus might have had any knowledge about, whatsoever?

A During the period of time that the surveillance was conducted of Mr. Sacchinelli's activities by myself or Mr. Dartus, or other members of our unit, Mr. Sacchinelli did not purchase either five kelos, five grams, or five or anything of cocaine. If he had, we had a plan to have him arrested upon his return to the Atlanta Airport through Mr. Marconi, a D.E.A. agent.

Q Now, in the same paragraph it states not only that Mr. Sacchinelli did purchase half of the five kelos on November 1, but it says that he was to

purchase the remainder the next day. Did he purchase anything the next day, on November 2?

A To my knowledge, no.

Q Was he under surveillance, to your knowledge?

A Specifically, I do not recall whether or not Mr. Sacchinelli came back to our surveillance point on that day. I know there was some surveillance done of him by a member of

MR. RILEY:

Mere association with an individual does not necessarily establish a pattern of conduct. Now, they're saying in this affidavit; this paragraph that his association with a person found not guilty, with a jury no less, was a pattern of bad conduct, that he did something in 1977, and now you're talking about 1978 and now you're talking about 1980 for a wiretap.

MR. SPARKS:

Q However, wouldn't it be pertinent that his Co-Defendant, Mr. Benson, was found guilty on the same charge, the same amount of marijuana and received a prison sentence?

A I'm happy you ask me that question with regard to the affidavit here. Two things in the affidavit, one is that no--I find no showing how the affidavit ties in Mr. Benson with Mr. Sacchinelli and his activities. That's like saying to you, "I know you and one of your friends did something wrong. I must be doing something wrong too because I know you and you know somebody else that did something wrong." You see, you allege here in your affidavit

and then you talk about a man who received five years in prison. Now, your order says to go ahead and intercept his telephone call because he's going to be involved. You have probable cause to believe that according to this affidavit, that Mr. Benson is going to be further involved in committing further crimes. When Mr. Benson was found guilty in 1977 and received a five year prison sentence he would still be in prison on February 26, 1980.

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Q Not necessarily.

A Well, the affidavit doesn't establish that. If you read the affidavit --

Q You know what parole is, I'm sure.

A Your investigator should have put that in here, that Mr. Benson is now out. That's information that's available to anybody. You know, anybody reading it might say he got five years and he's still in, but it don't show in here, no ties to Mr. Sacchinelli. You haven't tied to Mr. Roberts who was found innocent. Now, Mr. Roberts' friend is Mr. Sacchinelli. Mr. Roberts is innocent, but Mr. Roberts' friend by the name of Mr. Benson is guilty. How do you show his guilty friend is tied back to Mr. Sacchinelli?

A Because they were jointly indicted. Wouldn't you say Sacchinelli talks to--theoretically, I mean, circumstantially, to the telephone call, Sacchinelli talks with Roberts. Roberts and Benson are indicted, co-indicated, for the same crime. One is acquitted, the other--A Not acquitted, found innocent by a jury.

Q Acquitted means found guilty, sir.

A Acquitted means found guilty?

Q I said acquitted means found guilty, don't--aren't you familiar with that?

A I didn't know that acquitted meant found guilty.

Q Acquitted, yes--found not guilty.

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A Oh, found not guilty.

Q Found not guilty. One is acquitted, the other is found guilty of the same crime, so they were co-indicted, you don't think that case any inference that Sacchinelli was involved?

A No. You're talking about Sacchinelli going to go get cocaine. Now you're talking about him being involved with a guy with marijuana in 1977 to 1978 and then you don't show that the phone is being used to further any crime.

Q All right.

MR. SPARKS: Go ahead.

RE-DIRECT EXAMINATION: By Mr. Marger

Q In regard to the same paragraph, what does John Daniel Benson sentenced to five years and two years on parole (sic) have to do with an affidavit such as this?

A I find nothing. No association--if he was associating him with Mr. Sacchinelli there maybe something there, something convicing he's a narcotics dealer or--but no apparent association. No pattern.

Q Does the pattern in regard to showing John Daniel Benson getting five years and Mr. Dartus working for the Attorney General's Office have any similarity in their use within the affidavit, based on your experience?

A That's a loaded question, but I'll try to answer it. Similarity, no, because one is misrepresentation and one is a

factor limitation to Mr. Benson's sentence, and if you look at it as a whole it appears you're trying to load up on Mr. Sacchinelli.

Q What do you mean load up?

A Well, flowering up, as Mr. Dartus said, whether

intentionally or not intentionally, and then try to show some part of joint association through Roberts with Sacchinelli and Benson.

Q Now, with regard to the last paragraph on page 4, have you read that?

A Yes, sir.

Q You find anything in the affidavit which connects Mr. Sacchinelli to a DC-3 named in that paragraph?

A No, sir.

Q The DC-3 appeared to have landed in an airport in 1976.

A There were a lot of DC-3's that have landed in a lot of airports in 1976.

Q How, in your opinion as an expert, does that particular paragraph have a bearing in regard to the case in which the affidavit was given to request the warrant?

A Again, I think it is a "flowering up", an attempt to show there is an airpot--a plane landed at an airport with dope in it automatically makes it a "dope airport", and if you took that position you could say every airport in the United States or

probably in the Southeast United States is a dope

airport. For example, I'm sure Mr. Marconi would testify as to a number of dope seizures at the Atlanta Airport. I'm sure the people in Atlanta wouldn't like for it to be called a dope airport or a place where a lot of dope planes come in all the time.

Q Did you find anything in the affidavit that in any way ties up 2,500 pounds of marijuana, as in that particular paragraph, to Mr. Sacchinelli?

A None, no association, at no--no type of association whatsoever.

RE-CROSS EXAMINATION: By Mr. Sparks

Q Let me ask you a couple of questions. I'll try to speed this up. You don't find any probative evidence or probable cause or indication of probable cause in the fact that a plane was ceased at the west--at West Georgia Regional Airport in Carrollton, Georgia, with 2,500 pounds of marijuana? The fact that the affiant himself, the officer; Mr. Pierce, working in an undercover capacity, has learned that West Georgia Airport is frequently used for dope smugglers to fly in shipments of illegal drugs and narcotics, and the fact that Mr. Sacchinelli has made numerous calls from his apartment to Atlas Company; which is stationed there at the same airport, that

doesn't give you any indication that--

A I find the same coalition when you, yourself, calls

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Delta Airlines at the Atlanta International Airport to make reservations to fly out. Am I saying your going to the Atlanta Airport where a lot of dope coming in there, that you're involved in dope smuggling? Is it a crime for a man to call an airport? Now, if you tie it in, maybe the airport and the business that the man was calling and you tied that business into illegal activity and you tied the individual that was calling into illegal activities, you might have something there, but you--it's not tied in.

Q It is true, the first paragraph on the next page, is it not, sir? It says the affiant has had conversations with people know by him to be dope smugglers or drug smugglers. It's been stated, "Atlas Aviation performs maintenance and provides storage for such planes, referring back to aircraft smuggling in quantities of illegal drugs.".

A I use the same thing with Delta Airlines. People have performed maintenance on 747 and L1011, are they dope airlines too?

Q You've kind of changed your viewpoint since

you were an officer trying to vary out drug smugglers, haven't you?

A Not necessarily, I don't believe in drugs.

Q Sir?

A I do not believe in drugs. I'm looking at a factual situation. You ask me what the association was. I'm not giving you my viewpoint on narcotics, right or wrong or constitutionality.

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I'm going on an affidavit here with some facts in it.

MR. SPARKS: No further questions on this point.

RE-DIRECT EXAMINATION: By Mr. Marger

Q In regard to this affidavit, have you gone through and analyzed those portions which are substitive as opposed to those portions of the affidavit which you have found to contain no relative information whatsoever to the activities of Mr. Sacchinelli?

A Yes, sir.

Q What were--

A I'd like to finish my last answer to this gentleman over here. You were asking me about the airport situation. If you go down to the next

paragraph on page 5, "the affiant further shows that numerous telephone calls were made." If you're not going to say when the phone calls were made--there's no showing when these phone calls were made. They may have been made in 1951 or 1942, or they might have been made in 1973, there's not showing that it's an ongoing, continuing pattern. He might have called out there five times. That might have been a numerous amounts of time, but you don't show any time pattern as to when the undercover agent learned that this airport was a big dope airport. Were these calls made along that time or were they made prior to it or made after it? Were these phone calls made

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around the time when the DC-3 was brought in? If it was you might have some type of association where one man would believe, okay, the DC-3 is standing here, Atlas is using it, and right around the time this is all being done Mr. Sacchinelli was calling out to Atlas everyday, five times a day, a reasonable man might believe that the man is doing something, probably.

RE-CROSS EXAMINATION: By Mr. Sparks

Q You're probably coming around to my way of

A No, the paragraphs here though, you don't show a date, but you're saying he made calls out there. What association is there? When were the calls made, sir?

Q Don't you think the position in the affidavit indicates that it follows the information that the affiant got during his undercover capacity about Atlas?

A No, because he jumps around all over the affidavit. The first page of the affidavit is 1978, now we have reverted back to 1977, and then in a couple of minute we're going to jump back to 1979 at the bottom of the page. So, you don't really know. The affiant doesn't go in chronological order, starting off with 1977, 1978. You don't make any pattern. He goes here and yonder, '78, '77, '79, no pattern. There's no association, no pattern, no course of conduct.

Q There's a lot of suspicion, isn't there, in this

THE COURT:

to present anything in rebuttal? I just want to be sure we've gotten to the end.

MR. SPARKS: Yes, sir, we're at the end.

THE COURT: Okay. Now, the State gets the right to make the opening and closing final argument and I'm going to let you argue about all aspects of it.

MR. MARGER: Is the witness excused?

MR. SPARKS: He's excused I guess.

THE COURT: Okay, you're free to go, Mr. Riley.

(WITNESS IS EXCUSED)

THE COURT: Judges, perhaps too, are not without their running hands dilemas. I mean, you know, the Ike Smather's subpoena is illegal, you know. There is no question about it. It is issued--no doubt, people get in the habit, I guess, of the subpoena being issued in blank, and they have got a tool available to them and then they use that without--for an invalid purpose. And there is no question about it. It does carry the language on there not to--it goes further. The Supreme Court cases--I look at

that Miller case, and I couldn't

believe I'd find a case, but then I look at the Miller case and there's a case that's on invalid subpoenas, you know, out of the State of Georgia to get the guy's bank records. And, I feel like that in one of the other cases--if I can locate it--then the pen register case from the Northwest Answering Service, you know, it looks to me like the Miller case would say that Mr. Sacchinelli doesn't have any standing to object because it's an intrusion on a third person. And it's going to be difficult to fashion some type of remedy that will put an end to the Ike Smather's subpoenas situation that will pass on a message to them that they have got to quit doing it. Maybe a Grand Jury subpoena is allowable. I'm not that familiar with that, that it is not proper and it is not allowable. But, in that situation I think that probably it's a Sharon Bryan. There is a communication from a third person to the operator. And, it's interesting in Smith versus Maryland, in the pen register case, it says in there that--in the petitioner in his brief,

38639

24-226

SUPREME COURT OF GEORGIA

ATLANTA, April 21, 1982

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

Frank Joseph Sacchinelli v. The State

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur, except Smith, J., dissents.

~~BILL OF COSTS, $30.00~~

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA 5/21/82

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, ~~and that paid the above bill of costs.~~

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Johnie B. Williams Clerk.

Case No. 63077
Court of Appeals of Georgia

Remittitur from Supreme Court

Filed in office
MAY 26 1982

Alton Hawk
Clerk Court of Appeals of Georgia.

Case No. 3439 Decision Date 4/21/82

FRANK JOSEPH SACCHINELLI

v.

THE STATE

Motion for Rehearing/Reconsideration

Denied MAY 18 1982

Smith, Jr. dissents.

Gt Ex. 4-C

GEORGIA
COUNTY OF COBB

AFFIDAVIT BY LAW ENFORCEMENT OFFICER
IN SUPPORT OF APPLICATION FOR INVESTIGATIVE WARRANT 80-72

PERSONALLY APPEARED BEFORE THE UNDERSIGNED OFFICER AUTHORIZED TO ADMINISTER OATHS, COMES C. R. PIERCE, WHO BEING FIRST DULY SWORN ON OATH DEPOSES AND SAYS THAT HE IS A LAW ENFORCEMENT OFFICER WITH THE COBB COUNTY POLICE DEPARTMENT, WORKING UNDER THE SPECIAL INVESTIGATIONS DIVISION OF THE COBB COUNTY POLICE DEPARTMENT INVESTIGATING VIOLATIONS OF THE GEORGIA CONTROLLED SUBSTANCES ACT FOR SAID DEPARTMENT.

AFFIANT FURTHER STATES THAT HE HAS BEEN REGULARLY EMPLOYED BY THE COBB COUNTY POLICE DEPARTMENT FOR APPROXIMATELY SEVEN (7) YEARS AND HAS HAD THE RESPONSIBILITY OF INVESTIGATING VIOLATIONS OF THE GEORGIA CONTROLLED SUBSTANCES ACT FOR SAID DEPARTMENT FOR APPROXIMATELY FIVE (5) YEARS.

AFFIANT FURTHER STATES THAT INFORMATION RELATED TO AFFIANT ON THE 31ST DAY OF OCTOBER, 1978, BY AGENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, SHOWS THAT ON THE 30TH DAY OF OCTOBER, 1978, FRANK JOSEPH SACCHINELLI, ALONG WITH ANOTHER INDIVIDUAL BELIEVED TO BE ONE THOMAS STEVENS, DEPARTED FROM THE ATLANTA INTERNATIONAL AIRPORT WITH AT LEAST $100,000.00 OF U. S. CURRENCY, OBSERVED IN SACCHINELLI'S ATTACHE CASE DURING A ROUTINE SECURITY CHECKPOINT SEARCH. IT WAS DURING THE SECURITY CHECKPOINT SEARCH THAT FRANK

JOSEPH SACCHINELLI RELATED TO AN OFFICER OF THE ATLANTA POLICE DEPARTMENT AIRPORT DETAIL THAT THE BRIEFCASE CONTAINED $100,000.00. THIS INFORMATION WAS THEN RELATED TO THE AGENTS OF THE DRUG ENFORCEMENT ADMINISTRATION, WHO RELATED IT TO AFFIANT.

SURVEILLANCE INFORMATION RECEIVED FROM THE DADE COUNTY DEPARTMENT OF PUBLIC SAFETY, ORGANIZED CRIME NARCOTIC UNIT, AIRPORT DETAIL WHO ESTABLISHED SURVEILLANCE ON SACCHINELLI AND STEVENS UPON THEIR ARRIVAL IN MIAMI, FLORIDA ATTORNEY GENERAL'S ORGANIZED CRIME TASK FORCE ASSISTANT STATE ATTORNEY MARTIN DARDIS RECEIVED IN NOVEMBER OF 1978 AND CONFIRMED AGAIN IN MARCH OF 1979, INDICATES THAT SACCHINELLI AND STEVENS WERE IN MIAMI, FLORIDA TO PURCHASE APPROXIMATELY FIVE (5) KILOS OF COCAINE FROM A MAJOR COCAINE SUPPLIER IN MIAMI, FLORIDA.

INFORMATION RECEIVED FROM THE FLORIDA ATTORNEY GENERAL'S ORGANIZED CRIME TASK FORCE, ASSISTANT STATE'S ATTORNEY MARTIN DARDIS, DURING NOVEMBER, 1978, AND AGAIN IN MARCH 1979, INDICATED THAT SACCHINELLI PURCHASED ONE HALF OF THE FIVE (5) KILOS OF COCAINE ON NOVEMBER 1, 1978 AND WAS TO PURCHASE THE REMAINDER OF THE FIVE (5) KILOS THE NEXT DAY ON NOVEMBER 2, 1978.

ON NOVEMBER 3, 1978, SURVEILLANCE OF SACCHINELLI AND STEVENS WAS TERMINATED DUE TO THE FACT THAT THE SURVEILLANCE TEAM OF THE DADE COUNTY DEPARTMENT OF PUBLIC SAFETY WERE UNABLE TO FOLLOW SACCHINELLI AND STEVENS DUE TO TRAFFIC CONDITIONS AND VISUAL SIGHT OF THE VEHICLE IN WHICH THEY WERE IN WAS LOST.

AFFIANT FURTHER SHOWS THE FOLLOWING ACTS AND CIRCUMSTANCES, AS RELATED TO AFFIANT BY AN AGENT OF THE DRUG ENFORCEMENT ADMINISTRATION AND BY MEMBERS OF THE DADE COUNTY, FLORIDA DEPARTMENT OF PUBLIC SAFETY.

1. THAT FRANK JOSEPH SACCHINELLI WHILE IN MIAMI, FLORIDA ON OCTOBER 31, 1978 DID REGISTER AT THE RAMADA INN MOTEL, AT MIAMI INTERNATIONAL AIRPORT, IN ROOMS 206 AND 207.

RAMADA INN TELEPHONE RECORDS REFLECT THAT TELEPHONE CALLS BILLED TO SACCHINELLI DURING HIS STAY SHOW THE FOLLOWING: THAT TELEPHONE NUMBER (404) 943-4264 WAS CALLED TWICE FROM ROOM 206, AT 3:16 P.M. AND 7:32 P.M..

TELEPHONE NUMBER (404) 943-4264 ACCORDING TO RECORDS OBTAINED THROUGH SUBPOENA FROM SOUTHERN BELL TELEPHONE SECURITY IS LISTED TO ONE FORREST A. ROBERTS, 3400 VELMA DRIVE, POWDER SPRINGS, COBB COUNTY, MARIETTA, GEORGIA.

AFFIANT FURTHER SHOWS THAT ON JANUARY 18, 1977 FORREST A. ROBERTS AND JOHN DANIEL BENSON WERE INDICTED BY A FEDERAL GRAND JURY, FOR CONSPIRACY TO IMPORT THREE THOUSAND, THREE HUNDRED, TWENTY (3320) POUNDS OF MARIJUANA IN TALLAHASSEE, FLORIDA, AS RELATED TO AFFIANT BY AGENT M. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION, DURING THE MONTH OF OCTOBER, 1978.

THAT ON APRIL 5, 1977, FORREST A. ROBERTS WAS FOUND NOT GUILTY OF THE ABOVE CHARGES BY A JURY.

AFFIANT FURTHER SHOWS THAT ON THE 5TH DAY OF APRIL, 1977, JOHN DANIEL BENSON, AKA DANNY BENSON WAS FOUND GUILTY IN FEDERAL DISTRICT COURT IN TALLAHASSEE, FLORIDA, ON A TWO COUNT INDICTMENT CHARGING POSSESSION WITH INTENT TO DISTRIBUTE 3320 POUNDS OF MARIJUANA, AND

WITH INTENT TO DISTRIBUTE 3320 POUNDS OF MARIJUANA, AND CONSPIRACY, CODE SECTION 21USC 846 AND 21 USC 841a1. JOHN DANIEL BENSON WAS SENTENCED TO SERVE FIVE YEARS IN PRISON AND TWO YEARS ON PAROLE, AS RELATED TO AFFIANT BY AGENT M. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION, DURING THE MONTH OF OCTOBER, 1978.

2. THAT TOLL RECORD INFORMATION OBTAINED BY SUBPOENA BY AFFIANT, FROM SOUTHERN BELL TELEPHONE SECURITY ON TELEPHONE NUMBER (404) 435-2754 LISTED TO FRANK J. SACCHINELLI, 3042 SPRINGHILL ROAD, S.E., APARTMENT #H, SMYRNA, COBB COUNTY, GEORGIA. AND INFORMATION FURTHER OBTAINED ON NUMBERS THAT WERE CALLED FROM TELEPHONE NUMBER (404) 435-2754 OR CHARGED TO THAT NUMBER REFLECT THE FOLLOWING: THAT NUMEROUS TELEPHONE CALLS WERE MADE TO TELEPHONE NUMBER (404) 834-0061 FROM (404) 435-2754.

TELEPHONE NUMBER (404) 834-0061 IS LISTED TO ATLAS AVIATION, WEST GEORGIA REGIONAL AIRPORT, CARROLLTON, GEORGIA, AS VERIFIED BY AFFIANT THROUGH SOUTHERN BELL TELEPHONE COMPANY RECORDS OBTAINED BY SUBPOENA.

AFFIANT HAS RECEIVED INFORMATION FROM AGENT M. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION AND OTHER FELLOW LAW ENFORCEMENT OFFICERS SINCE DECEMBER, 1976. THAT IN DECEMBER, 1976, A DC-3 AIRCRAFT BEARING IDENTIFICATION (TAIL) NUMBER N11EL WAS SEIZED BY MEMBERS OF THE GEORGIA BUREAU OF INVESTIGATION AND CARROLL COUNTY SHERIFF'S DEPARTMENT AT WEST GEORGIA REGIONAL AIRPORT AND FOUND TO CONTAIN SOME TWO THOUSAND FIVE HUNDRED POUNDS OF MARIJUANA.

FURTHER, AFFIANT SHOWS THAT HE DURING THE INVESTIGATION OF ILLEGAL DRUG TRANSACTIONS, WHILE ACTING IN AN UNDERCOVER CAPACITY, HAS HAD PERSONAL CONVERSATION WITH PERSONS KNOWN TO AFFIANT TO BE DRUG SMUGGLERS WHO HAVE STATED THAT WEST GEORGIA REGIONAL AIRPORT, CARROLLTON, GEORGIA, IS A PLACE TO LAND AIRCRAFT SMUGGLING QUANTITIES OF ILLEGAL DRUGS AND ATLAS AVIATION PERFORMS MAINTENANCE AND PROVIDES STORAGE FOR SUCH PLANES.

AFFIANT FURTHER SHOWS THAT NUMEROUS TELEPHONE CALLS HAVE BEEN MADE FROM (404) 435-2754 TO (714) 494-3310 AND (714) 497-2421, ACCORDING TO RECORDS OF THE SOUTHERN BELL TELEPHONE COMPANY OBTAINED THROUGH SUBPOENA BY AFFIANT.

TELEPHONE NUMBER (714) 494-3310 IS LISTED TO ONE PAMELA MESSINA, 2573 BLUEBIRD CANYON, LAGUANA BEACH, CALIFORNIA, ACCORDING TO MEMBERS OF THE LOS ANGELES, CALIFORNIA POLICE DEPARTMENT AND RELATED TO AFFIANT IN OCTOBER, 1979, AND AGAIN IN THE MONTH OF JANUARY, 1980.

AFFIANT FURTHER SHOWS THAT TELEPHONE NUMBER (714)497-2421 IS LISTED TO LAGUANA BEACH REAL ESTATE AND CONSTRUCTION, 580 BROADWAY, LAGUANA BEACH, CALIFORNIA. THIS IS THE BUSINESS ADDRESS OF ONE SAM SARCINELLI, ACCORDING TO MEMBERS OF THE LOS ANGELES CALIFORNIA POLICE DEPARTMENT AND RELATED TO AFFIANT IN OCTOBER, 1979, AND AGAIN IN JANUARY, 1980.

AFFIANT FURTHER SHOWS THAT ON THE 19TH DAY OF JUNE, 1979, AGENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION DID SEIZE APPROXIMATELY THIRTEEN AND TWO-TENTHS POUNDS OF COCAINE

AND APPROXIMATELY $55,000.00 OF U. S. CURRENCY IN THE POSSESSION OF SAM SARCINELL, PAMELA MESSINA, AND ANOTHER INDIVIDUAL AT THE HOLIDAY INN NORTH, 4900 POWER LINE ROAD, FT. LAUDERDALE, FLORIDA, ROOM 216 AND ROOM 214. AFFIANT STATES THAT AGENTS OF THE DRUG ENFORCEMENT ADMINISTRATION RELATED THIS INFORMATION TO AFFIANT DURING THE MONTH OF JUNE, 1979.

AFFIANT ALSO SHOWS THAT ON THE 19TH DAY OF JUNE, 1979, A TELEPHONE CALL WAS PLACED FROM ROOM 216, HOLIDAY INN NORTH, 4900 POWER LINE ROAD, FT. LAUDERDALE, FLORIDA, TO (404) 435-2754.

AFFIANT FURTHER SHOWS THAT ON THE 19TH DAY OF JUNE, 1979, A TOTAL OF SIX TELEPHONE CALLS WERE PLACED TO (305) 776-4880, EITHER FROM (404) 435-2754 OR FROM ANOTHER TELEPHONE NUMBER AND BILLED TO (404) 435-2754, ACCORDING TO RECORDS OBTAINED FROM SOUTHERN BELL TELEPHONE COMPANY THROUGH SUBPOEAN BY AFFIANT.

AFFIANT SHOWS THAT (305) 776-4880 IS LISTED TO THE HOLIDAY INN NORTH, 4900 POWER LINE ROAD, FORT LAUDERDALE, FLORIDA, AS PERSONALLY VERIFIED BY AFFIANT IN THE MONTH OF JUNE, 1979, AND AGAIN IN JANUARY, 1980.

AFFIANT FURTHER SHOWS THAT ON THE 24TH DAY OF AUGUST, 1979, SAM SARCINELLI AND PAMELA MESSINA, ALONG WITH ANOTHER INDIVIDUAL WERE INDICTED BY FEDERAL GRAND JURY ON CHARGES OF CONSPIRACY AND POSSESSION WITH INTENT TO DISTRIBUTE APPROXIMATELY THIRTEEN AND TWO-TENTHS POUNDS OF COCAINE. THE ABOVE INFORMATION RELATED TO AFFIANT BY MEMBERS OF THE DRUG ENFORCEMENT ADMINISTRATION IN THE MONTH OF SEPTEMBER, 1979, AND AGAIN IN JANUARY, 1980.

On January 16, 1980, at approximately 6:45 P.M., affiant personally telephoned (404) 435-2754 to again verify that (404) 435-2754 was a working number.

Affiant received a recorded message that the above telephone number, (404) 435-2754, had been temporarily disconnected.

On January 17, 1980, affiant contacted Southern Bell Telephone Company Security and was advised that telephone number (404) 435-2754 had been temporarily disconnected on January 8, 1980, for non-payment of bill.

On February 25, 1980, affiant personally telephoned (404) 435-2754 at approximately 1:30 P.M., and found that the number was a working number and was answered by a male voice.

On February 25, 1980, affiant contacted Southern Bell Telephone Company Security and was advised that (404) 435-2754 had been re-connected on February 22, 1980, in the name of Frank J. Sacchinelli at 3042 Springhill Road, S.E., Apartment H, Smyrna, Cobb County, Georgia.

During the period from January 16, 1980, through February 25, 1980, affiant has personally conducted periodic checks of telephone number (404) 435-2754 by telephoning said number and on all occasions has received a recorded message stating that the telephone was temporarily disconnected, with the exception of February 25, 1980, at approximately 1:30 P.M. when affiant determined that the telephone had been re-connected.

AFFIANT FURTHER SHOWS THAT ON JANUARY 18, 1980, HE RECEIVED FROM AGENT W. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION, INFORMATION FURNISHED TO AGENT PADGETT BY UNITED STATES CUSTOMS AGENT JOHN ROBERTSON THAT SAME DATE. THIS INFORMATION SHOWS THAT ON JANUARY 18, 1930, A CESSNA 310 TWIN ENGINE AIRCRAFT, MAROON AND WHITE IN COLOR, BEARING AIRCRAFT IDENTIFICATION (TAIL NUMBER) N69673 HAD LANDED AT ANDERSON, SOUTH CAROLINA WITH AN AIRCRAFT FROM THE AIR WING PATROL UNIT OF THE UNITED STATES CUSTOMS SERVICE IN AIRBORNE SURVEILLANCE WHICH SUBSEQUENTLY LANDED AT THE SAME AIRPORT.

AGENT ROBERTSON FURTHER RELATED TO AGENT PADGETT WHO RELATED TO AFFIANT THAT THE ABOVE CESSNA AIRCRAFT WAS TRACKED BY AIRBORNE RADAR OF THE UNITED STATES CUSTOMS SERVICE INTO UNITED STATES AIRSPACE FROM THE CARIBBEAN ISLANDS. SURVEILLANCE WAS ESTABLISHED TO APPREHEND THE CESSNA AIRCRAFT FOR ILLEGAL ENTRY INTO THE UNITED STATES WITHOUT PRIOR UNITED STATES CUSTOMS CLEARANCE.

FURTHER, AGENT ROBERTSON RELATED TO AGENT PADGETT WHO HAS RELATED TO AFFIANT THAT UPON LANDING AT ANDERSON, SOUTH CAROLINA, THE ABOVE CESSNA AIRCRAFT TOOK ON ADDITIONAL FUEL. THE SURVEILLING UNITED STATES CUSTOMS AIRCRAFT ATTEMPTED TO STOP DEPARTURE OF THE CESSNA AIRCRAFT BY BLOCKING THE ACTIVE RUNWAY. UPON THE SURVEILLANCE AIRCRAFT PULLING INTO THE BLOCKING POSITION, THE CESSNA AIRCRAFT DID TURN ONTO A GRASS TAXIWAY AND THEN AGAIN BECOME AIRBORNE AND ELUDED THE UNITED STATES CUSTOMS AIRCRAFT.

FURTHER, CONSIDERING ALL THE SAID CIRCUMSTANCES AFFIANT HAS PROBABLE CAUSE TO BELIEVE THAT THE SAID FRANK JOSEPH SACCHINELLI HAS COMMITTED, IS COMMITTING, AND IS ABOUT TO COMMIT THE CRIME OF VIOLATION OF GEORGIA CONTROLLED SUBSTANCES ACT, IN VIOLATION OF THE PENAL LAWS OF GEORGIA.

AFFIANT ALSO HAS PROBABLE CAUSE TO BELIEVE THAT THE FOLLOWING TYPE OF COMMUNICATIONS SOUGHT TO BE INTERCEPTED WILL BE ENGAGED IN BY THE AFORESAID PERSONS, TO-WIT: ALL DISCUSSIONS CONCERNING SAID OFFENSE, INCLUDING BUT NOT LIMITED TO THE TRANSPORTATION, RECEIPT, PURCHASE AND STORAGE OF COCAINE, THE RETAIL AND WHOLESALE PRICE OF COCAINE TO BE PURCHASED AND SOLD; THE PLACES WHERE COCAINE IS TO BE PURCHASED, SOLD, OR TRANSFERRED; POTENTIAL DISTRIBUTORS OR PURCHASORS OF COCAINE; THE IDENTITIES OF OTHER CONSPIRATORS AND ACCOMPLICES ENGAGED IN THE ILLEGAL TRAFFIC OF COCAINE; AND THE ACTIVITIES OF LAW ENFORCEMENT AGENCIES CHARGED WITH INVESTIGATING SAID OFFENSE.

AFFIANT MAKES THIS AFFIDAVIT FOR THE INFORMATION OF THOMAS J. CHARRON, DISTRICT ATTORNEY OF THE COBB JUDICIAL CIRCUIT, TO BE ANNEXED AS AN EXHIBIT TO HIS PETITION FOR AN INVESTIGATION WARRANT TO INTERCEPT, OVERHEAR AND RECORD CONVERSATIONS BETWEEN FRANK JOSEPH SACCHINELLI, THOMAS STEVENS, FORREST A. ROBERTS, JOHN DANIEL BENSON, SAM SARCINELLI, PAMELA MESSINA AND OTHER UNKNOWN PERSONS, BECAUSE:

(A) OTHER INVESTIGATION PROCEDURES HAVE BEEN TRIED AND FAILED;

(B) BECAUSE OF THE SECRECY WITH WHICH SAID PERSONS CONDUCT SUCH UNLAWFUL ENTERPRISES OTHER INVESTIGATIVE PROCEDURES REASONABLY APPEAR TO BE UNLIKELY TO SUCCEED;

AFFIANT SHOWS THAT IT IS NECESSARY, IN ORDER TO OVERHEAR, INTERCEPT AND RECORD CONVERSATIONS OF THE AFORESAID PERSONS CONCERNING THE AFORESAID OFFENSE, TO USE AND EMPLOY CERTAIN HEREINAFTER DESCRIBED DEVICES, INSTRUMENTS AND APPARATUS, TO-WIT: A "LEASED" LINE, ATTACHED DIRECTLY TO THE TERMINAL BOX OF TELEPHONE NUMBER (404) 435-2754, LOCATED AT 3042 SPRINGHILL ROAD, S. E., APARTMENT NUMBER H, IN THE APARTMENT COMPLEX KNOWN AS POST LAKE APARTMENTS, IN SMYRNA, COBB COUNTY, GEORGIA, WHEREIN THE LINES TO SAID TELEPHONE ARE RUN, THENCE TO THE MAIN TELEPHONE CONNECTING TRUNK LINE, THENCE TO A REMOTE LOCATION IN COBB COUNTY, GEORGIA, AND ATTACHED AT THIS LOCATION TO AN ELECTRONIC MONITORING DEVICE, TAPE RECORDERS AND DIGITAL NUMBER RECORDER, SAID DEVICE TO BE ACTIVATED AND BEGIN TRANSMISSION WHENEVER THE ABOVE MENTIONED TELEPHONE OR ITS EXTENSIONS IS REMOVED FROM ITS CRADLE AND TO AUTOMATICALLY CEASE RECORDING UPON THE RETURN OF SAID TELEPHONE OR ITS EXTENSIONS TO SAID CRADLE.

AFFIANT FURTHER SHOWS THAT THE EXIGENCIES OF THE SITUATION OVERCOME AND OVERRIDE THE NEED FOR GIVING NOTICE OF SURVEILLANCE TO FRANK JOSEPH SACCHINELLI, THOMAS STEVENS, FORREST A. ROBERTS, JOHN DANIEL BENSON, SAM SARCINELLI, AND PAMELA MESSINA FOR THE FOLLOWING REASONS, TO-WIT:

(A) THE SUSPECTS MAY FLEE THIS JURISDICTION;

(B) DISPOSE OF EVIDENCE;

(C) TERMINATE USAGE OF THE ABOVE LISTED TELEPHONE;

(D) TERMINATE OR REMOVE FROM DETECTION ANY FURTHER OPERATION OF THE AFOREMENTIONED CRIMINAL

ENTERPRISE IN THIS JURISDICTION;

(E) NOTIFY AND ALERT OTHER KNOWN AND UNKNOWN CO-CONSPIRATORS, ASSOCIATES, AND ACCOMPLICES WHO ARE PART AND PARCEL OF THE CRIMINAL ENTERPRISE SO AS TO FRUSTRATE FURTHER INVESTIGATION.

C. R. Pierce

AFFIANT

additional oral testimony received 2:45 p.m.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF FEBRUARY, 1980.

JUDGE, COBB SUPERIOR COURT
COBB JUDICIAL CIRCUIT

Ex 5.C

GEORGIA
COUNTY OF COBB

AFFIDAVIT BY LAW ENFORCEMENT OFFICER
IN SUPPORT OF APPLICATION FOR EXTENSION OF
SURVEILLANCE PERIOD AND RENEWAL OF
INVESTIGATION WARRANT

NOW COMES C. R. PIERCE, AGENT WITH THE SPECIAL INVESTIGATIONS DIVISION OF THE COBB COUNTY POLICE DEPARTMENT WHO, AFTER BEING DULY SWORN AND ON OATH SAYS:

AFFIANT IS THE INVESTIGATING OFFICER EXECUTING INVESTIGATION WARRANT 80-02 AUTHORIZING THE INTERCEPTION AND RECORDING OF CERTAIN TELEPHONE CONVERSATIONS FROM TELEPHONE NUMBER (404) 435-2754 LISTED TO FRANK JOSEPH SACCHINELLI, 3042 SPRINGHILL ROAD, APT. H, SMYRNA, COBB COUNTY, GEORGIA. SAID WARRANT AUTHORIZED SUCH SURVEILLANCE FOR A TWENTY (20) DAY PERIOD ENDING AT 8:00 O'CLOCK A.M. ON MARCH 17, 1980, FOR THE PURPOSE OF INVESTIGATING SUSPECTED NARCOTICS TRAFFICING AS DETAILED IN THE ORIGINAL AFFIDAVIT BY AFFIANT.

BASED ON HIS PERSONAL MONITORING OF THE CONVERSATIONS PURSUANT TO SAID INVESTIGATION WARRANT AND FROM INFORMATION RECEIVED FROM FELLOW OFFICERS UNDER HIS SUPERVISION AND CONTROL WHO ARE ALSO ACTING PURSUANT TO SAID INVESTIGATION WARRANT, CONDUCTING THE AUTHORIZED SURVEILLANCE, STATES THE FOLLOWING FACTS:

A) THE ELECTRONIC SURVEILLANCE HAS CONFIRMED THE INFORMATION GIVEN IN HIS ORIGINAL AFFIDAVIT IN SUPPORT OF SAID INVESTIGATION WARRANT THAT FRANK JOSEPH SACCHINELLI AND OTHERS ARE INVOLVED IN A CONSPIRACY TO IMPORT A SHIPMENT OF ILLEGAL DRUGS INCLUDING BUT NOT LIMITED TO COCAINE INTO

THE STATE OF GEORGIA.

B) THE ELECTRONIC SURVEILLANCE SHOWS THAT PLANS FOR SAID ACTIVITY HAVE BEEN FORMULATED BY THE CONSPIRATORS, INCLUDING INDIVIDUALS NAMED IN AFFIANT'S ORIGINAL AFFIDAVIT. THE EXECUTION OF THESE PLANS ARE NOW BEING WITHHELD AWAITING INSTRUCTIONS FROM ONE OF THE MEMBERS OF THE CONSPIRACY AS TO THE PRECISE DATE OF IMPORTATION.

C) THE ELECTRONIC SURVEILLANCE HAS REVEALED THAT SAID IMPORTATION WILL OCCUR AT SOMETIME WITHIN THE NEAR FUTURE CONTINGENT UPON RECEIVING AUTHORIZATION FROM ONE OF THEIR NUMBER.

D) THE ELECTRONIC SURVEILLANCE HAS FURTHER REVEALED THAT SAID IMPORTATION WILL BE ACCOMPLISHED THROUGH THE USE OF AIRCRAFT AND FRANK JOSEPH SACCHINELLI REQUESTED MAINTENANCE ASSISTANCE ON ONE CESSNA 310 LOCATED AT AN AIRPORT IN BARTOW COUNTY, GEORGIA.

E) VISUAL SURVEILLANCE OF SAID AIRPORT AND AIRPLANE HAS CONFIRMED MAINTENANCE ACTIVITY TO SAID AIRCRAFT AFTER THE TELEPHONE REQUEST.

F) INTERCEPTED CONVERSATIONS REVEAL THE USE OF CODES, SLANG TERMINOLOGY, AND OTHER WORDING WHICH HAS BEEN DIFFICULT TO INTERPRET TO DATE.

G) DURING INTERCEPTION OF CONVERSATIONS, PERSONS WHO WERE UNKNOWN TO THE INVESTIGATION AT ITS BEGINNING HAVE COME TO LIGHT. SOME OF THESE PERSONS HAVE BEEN

CAP [redacted] IDENTIFIED BUT AS YET OTHERS REMAIN UNIDENTIFIED.

THEREFORE, AFFIANT BELIEVES THAT IF SAID INVESTIGATIVE WARRANT IS RENEWED AND THE PERIOD OF SURVEILLANCE IS EXTENDED FOR TWENTY (20) DAYS, AGENTS MAY BE ABLE TO DISCOVER THE IDENTITY OF ALL PERSONS INVOLVED IN THE CONSPIRACY, THE EXACT TIME AND CIRCUMSTANCES OF THE IMPORTATION WILL BE ESTABLISHED, AND A SEIZURE OF THE DRUGS AND ARREST OF THE CONSPIRATORS CAN BE EFFECTED.

C. R. Pierce

C. R. PIERCE

SWORN TO AND SUBSCRIBED BY ME
THIS THE 16th DAY OF March, 1980.

Bobbie C. Chilton

NOTARY PUBLIC
My commission expired 4-23-83

D-1

D. J. SISSON

P.O. BOX 649
MARIETTA, GA. 30061 404-422-8420

THE STATE OF GEORGIA

— versus —

IKE SMATHERS

IN THE SUPERIOR COURT
FOR THE COUNTY OF COBB
STATE OF GEORGIA

CASE NO.

To: Northwestern Answering Service
Crescent Drive
Marietta, Georgia
ATTN: Sharon Bryan

That, laying all other business aside, you be and appear at the next Superior Court, to be held in and for said County in Courtroom A, 4th Floor, Cobb Judicial Building, Marietta, Georgia, on the 27th day of September, 19 79, at 9:30 o'clock A. M. and bring with you to produce in said Court the following:
Pursuant to an official investigation being conducted by the Cobb County Police Department it is hereby requested that your company furnish any and all records pertaining to the following people: one Frank Sacchinelli, one Danny Benson, and one Steve Nusick.

You are not to disclose the existence of this request for a period of 90 days from the date of this request. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law. In lieu of your appearing in court on the above date this information may be released to Sgt. David Sisson of the Cobb County Police Department or his representative delivering this supboena.

to be used in evidence by THE STATE OF GEORGIA

Herein Fail Not Under the Penalty of the Law.

Witness the Honorable Howell C. Ravan, Luther C. Hames, Jr., James L. Bullard and Watson L. White, Judges of said Court.

Given under my hand and the official seal of this office, this 27th day of September, 19 79

Cathy C. Bennett
Deputy Clerk, Cobb Superior Court
Cobb Judicial Circuit

(SEAL)

Sup 10-2

THE STATE OF GEORGIA

— versus —

DANNY BENSON, FRANK JOSEPH SACCHINELLI AND STEVE MUSICK

IN THE SUPERIOR COURT
FOR THE COUNTY OF COBB
STATE OF GEORGIA

CASE NO. _____

To: NORTHWEST ANSWERING SERVICE
MANAGER

That, laying all other business aside, you be and appear at the next Superior Court, to be held in and for said County in Courtroom 3, 4TH Floor, Cobb Judicial Building, Marietta, Georgia, on the 30TH day of MAY, 1980, at 3:00 o'clock P.M. and bring with you to produce in said Court the following:

PURSUANT TO AN OFFICIAL CRIMINAL INVESTIGATION OF A SUSPECTED FELONY BEING CONDUCTED BY THE COBB COUNTY POLICE DEPT., IT IS REQUESTED THAT YOUR COMPANY FURNISH TELEPHONE NUMBERS, MESSAGES, NOTES, ETC. LISTED TO THE ABOVE NAMED INDIVIDUALS, FOR THE DATES OF JANUARY 1, 1980 THRU THE PRESENT DATE.

YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS REQUEST FOR A PERIOD OF NINETY DAYS. ANY SUCH DISCLOSURE COULD IMPEDE THIS INVESTIGATION AND THEREBY INTERFERE WITH THE ENFORCEMENT OF THE LAW.

IN LIEU OF YOU APPEARING IN COURT ON THE ABOVE DATE, THIS INFORMATION CAN BE FURNISHED TO SGT. D. T. PHILLIPS WITH THE COBB COUNTY POLICE DEPT., OR HIS REPRESENTATIVE SERVING THIS SUBPOENA.

to be used in evidence by THE STATE

Herein Fail Not Under the Penalty of the Law.

Witness the Honorable Howell C. Ravan, Luther C. Hames, Jr., James L. Bullard and Watson L. White, Judges of said Court.

Given under my hand and the official seal of this office, this 28TH day of MAY, 1980

Rita Dilbeck
Deputy Clerk, Cobb Superior Court
Cobb Judicial Circuit

department of public safety
COBB COUNTY

SGT. DON PHILLIPS

DEPT OF PUBLIC SAFETY
AREA CODE

DEFENDANT'S EXHIBIT 2

8-3

STATE OF GEORGIA

COUNTY OF COBB

I, BEVERLY HENRY, DEPUTY of the Superior court of Cobb County, Georgia, do hereby certify that I have examined the records of said court, and find no record of an indictment or accusation against:

STEVE MUSIC

for any crime involving moral terpitude or a violation of the State Prohibition Laws during the past five years.

Given under my hand and seal of Office:

This 4th day of November, 1980

Beverly Henry

CLERK OF SUPERIOR COURT

COBB COUNTY, GEORGIA

Exh. D-4

STATE OF GEORGIA

COUNTY OF COBB

I, BEVERLY HENRY, DEPUTY of the Superior court of Cobb County, Georgia, do hereby certify that I have examined the records of said court, and find no record of an indictment or accusation against:

FRANK SACCHINELLI

for any crime involving moral terpitude or a violation of the State Prohibition Laws during the past five years.

Given under my hand and seal of Office.

This 4th day of November, 1980

Beverly Henry

CLERK OF SUPERIOR COURT

COBB COUNTY, GEORGIA

STATE OF GEORGIA

COUNTY OF COBB

I, SEVERLY HENRY, DEPUTY of the Superior court of Cobb County, Georgia, do hereby certify that I have examined the records of said court, and find no record of an indictment or accusation against:

DANNY BENSON

for any crime involving moral terpitude or a violation of the State Prohibition Laws during the past five years.

Given under my hand and seal of Office.

This 4th day of November, 1980

Beverly Henry

CLERK OF SUPERIOR COURT

COBB COUNTY, GEORGIA

STATE OF GEORGIA

COUNTY OF COBB

I, BEVERLY HENRY, DEPUTY of the Superior court of Cobb County, Georgia, do hereby certify that I have examined the records of said court, and find no record of an indictment or accusation against:

IKE SMATHERS

for any crime involving moral terpitude or a violation of the State Prohibition laws, during the past five years.

Given under my hand and seal of Office:

This 4th day of November, 1980

Beverly Henry

CLERK OF SUPERIOR COURT

COBB COUNTY, GEORGIA

GEORGIA
COUNTY OF COBB

AFFIDAVIT BY LAW ENFORCEMENT OFFICER
IN SUPPORT OF APPLICATION FOR EXTENSION OF
SURVEILLANCE PERIOD AND RENEWAL OF
INVESTIGATION WARRANT

NOW COMES C. R. PIERCE, AGENT WITH THE SPECIAL INVESTIGATIONS DIVISION OF THE COBB COUNTY POLICE DEPARTMENT WHO, AFTER BEING DULY SWORN AND ON OATH SAYS:

AFFIANT IS THE INVESTIGATING OFFICER EXECUTING INVESTIGATION WARRANT 80-02 AUTHORIZING THE INTERCEPTION AND RECORDING OF CERTAIN TELEPHONE CONVERSATIONS FROM TELEPHONE NUMBER (404) 435-2754 LISTED TO FRANK JOSEPH SACCHINELLI, 3042 SPRINGHILL ROAD, APT. H, SMYRNA, COBB COUNTY, GEORGIA. SAID WARRANT AUTHORIZED SUCH SURVEILLANCE FOR A TWENTY (20) DAY PERIOD ENDING AT 8:00 O'CLOCK A.M. ON MARCH 17, 1980, FOR THE PURPOSE OF INVESTIGATING SUSPECTED NARCOTICS TRAFFICING AS DETAILED IN THE ORIGINAL AFFIDAVIT BY AFFIANT.

BASED ON HIS PERSONAL MONITORING OF THE CONVERSATIONS PURSUANT TO SAID INVESTIGATION WARRANT AND FROM INFORMATION RECEIVED FROM FELLOW OFFICERS UNDER HIS SUPERVISION AND CONTROL WHO ARE ALSO ACTING PURSUANT TO SAID INVESTIGATION WARRANT, CONDUCTING THE AUTHORIZED SURVEILLANCE STATES THE FOLLOWING FACTS:

A) THE ELECTRONIC SURVEILLANCE HAS CONFIRMED THE INFORMATION GIVEN IN HIS ORIGINAL AFFIDAVIT IN SUPPORT OF SAID INVESTIGATION WARRANT THAT FRANK JOSEPH SACCHINELLI AND OTHERS ARE INVOLVED IN A CONSPIRACY TO IMPORT A SHIPMENT OF ILLEGAL DRUGS INCLUDING BUT NOT LIMITED TO COCAINE INTO

THE STATE OF GEORGIA.

B) THE ELECTRONIC SURVEILLANCE SHOWS THAT PLANS FOR SAID ACTIVITY HAVE BEEN FORMULATED BY THE CONSPIRATORS, INCLUDING INDIVIDUALS NAMED IN AFFIANT'S ORIGINAL AFFIDAVIT. THE EXECUTION OF THESE PLANS ARE NOW BEING WITHHELD AWAITING INSTRUCTIONS FROM ONE OF THE MEMBERS OF THE CONSPIRACY AS TO THE PRECISE DATE OF IMPORTATION.

C) THE ELECTRONIC SURVEILLANCE HAS REVEALED THAT SAID IMPORTATION WILL OCCUR AT SOMETIME WITHIN THE NEAR FUTURE CONTINGENT UPON RECEIVING AUTHORIZATION FROM ONE OF THEIR NUMBER.

D) THE ELECTRONIC SURVEILLANCE HAS FURTHER REVEALED THAT, SAID IMPORTATION WILL BE ACCOMPLISHED THROUGH THE USE OF AIRCRAFT AND FRANK JOSEPH SACCHINELLI REQUESTED MAINTENANCE ASSISTANCE ON ONE CESSNA 310 LOCATED AT AN AIRPORT IN BARTOW COUNTY, GEORGIA.

E) VISUAL SURVEILLANCE OF SAID AIRPORT AND AIRPLANE HAS CONFIRMED MAINTENANCE ACTIVITY TO SAID AIRCRAFT AFTER THE TELEPHONE REQUEST.

F) INTERCEPTED CONVERSATIONS REVEAL THE USE OF CODES, SLANG TERMINOLOGY, AND OTHER WORDING WHICH HAS BEEN DIFFICULT TO INTERPRET TO DATE.

G) DURING INTERCEPTION OF CONVERSATIONS, PERSONS WHO WERE UNKNOWN TO THE INVESTIGATION AT ITS BEGINNING HAVE COME TO LIGHT. SOME OF THESE PERSONS HAVE BEEN

THE STATE OF GEORGIA.

B) THE ELECTRONIC SURVEILLANCE SHOWS THAT PLANS FOR SAID ACTIVITY HAVE BEEN FORMULATED BY THE CONSPIRATORS, INCLUDING INDIVIDUALS NAMED IN AFFIANT'S ORIGINAL AFFIDAVIT. THE EXECUTION OF THESE PLANS ARE NOW BEING WITHHELD AWAITING INSTRUCTIONS FROM ONE OF THE MEMBERS OF THE CONSPIRACY AS TO THE PRECISE DATE OF IMPORTATION.

C) THE ELECTRONIC SURVEILLANCE HAS REVEALED THAT SAID IMPORTATION WILL OCCUR AT SOMETIME WITHIN THE NEAR FUTURE CONTINGENT UPON RECEIVING AUTHORIZATION FROM ONE OF THEIR NUMBER.

D) THE ELECTRONIC SURVEILLANCE HAS FURTHER REVEALED THAT SAID IMPORTATION WILL BE ACCOMPLISHED THROUGH THE USE OF AIRCRAFT AND FRANK JOSEPH SACCHINELLI REQUESTED MAINTENANCE ASSISTANCE ON ONE CESSNA 310 LOCATED AT AN AIRPORT IN BARTOW COUNTY, GEORGIA.

E) VISUAL SURVEILLANCE OF SAID AIRPORT AND AIRPLANE HAS CONFIRMED MAINTENANCE ACTIVITY TO SAID AIRCRAFT AFTER THE TELEPHONE REQUEST.

F) INTERCEPTED CONVERSATIONS REVEAL THE USE OF CODES, SLANG TERMINOLOGY, AND OTHER WORDING WHICH HAS BEEN DIFFICULT TO INTERPRET TO DATE.

G) DURING INTERCEPTION OF CONVERSATIONS, PERSONS WHO WERE UNKNOWN TO THE INVESTIGATION AT ITS BEGINNING HAVE COME TO LIGHT. SOME OF THESE PERSONS HAVE BEEN

CAP [redacted] IDENTIFIED BUT AS YET OTHERS REMAIN UN-
Boe
IDENTIFIED.

THEREFORE, AFFIANT BELIEVES THAT IF SAID INVESTIGATIVE WARRANT IS RENEWED AND THE PERIOD OF SURVEILLANCE IS EXTENDED FOR TWENTY (20) DAYS, AGENTS MAY BE ABLE TO DISCOVER THE IDENTITY OF ALL PERSONS INVOLVED IN THE CONSPIRACY, THE EXACT TIME AND CIRCUMSTANCES OF THE IMPORTATION WILL BE ESTABLISHED, AND A SEIZURE OF THE DRUGS AND ARREST OF THE CONSPIRATORS CAN BE EFFECTED.

C. R. Pierce

C. R. PIERCE

SWORN TO AND SUBSCRIBED BY ME
THIS THE 16th DAY OF March, 1990.

Bobbie C. Clifton

NOTARY PUBLIC
My commission expires 4-23-93

D-11

GEORGIA
COUNTY OF COBB

AFFIDAVIT BY LAW ENFORCEMENT OFFICER
IN SUPPORT OF APPLICATION FOR INVESTIGATIVE WARRANT 80-02

PERSONALLY APPEARED BEFORE THE UNDERSIGNED OFFICER AUTHORIZED TO ADMINISTER OATHS, COMES C. R. PIERCE, WHO BEING FIRST DULY SWORN ON OATH DEPOSES AND SAYS THAT HE IS A LAW ENFORCEMENT OFFICER WITH THE COBB COUNTY POLICE DEPARTMENT, WORKING UNDER THE SPECIAL INVESTIGATIONS DIVISION OF THE COBB COUNTY POLICE DEPARTMENT INVESTIGATING VIOLATIONS OF THE GEORGIA CONTROLLED SUBSTANCES ACT FOR SAID DEPARTMENT.

AFFIANT FURTHER STATES THAT HE HAS BEEN REGULARLY EMPLOYED BY THE COBB COUNTY POLICE DEPARTMENT FOR APPROXIMATELY SEVEN (7) YEARS AND HAS HAD THE RESPONSIBILITY OF INVESTIGATING VIOLATIONS OF THE GEORGIA CONTROLLED SUBSTANCES ACT FOR SAID DEPARTMENT FOR APPROXIMATELY FIVE (5) YEARS.

AFFIANT FURTHER STATES THAT INFORMATION RELATED TO AFFIANT ON THE 31ST DAY OF OCTOBER, 1978, BY AGENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, SHOWS THAT ON THE 30TH DAY OF OCTOBER, 1978, FRANK JOSEPH SACCHINELLI, ALONG WITH ANOTHER INDIVIDUAL BELIEVED TO BE ONE THOMAS STEVENS, DEPARTED FROM THE ATLANTA INTERNATIONAL AIRPORT WITH AT LEAST $100,000.00 OF U. S. CURRENCY, OBSERVED IN SACCHINELLI'S ATTACHE CASE DURING A ROUTINE SECURITY CHECKPOINT SEARCH. IT WAS DURING THE SECURITY CHECKPOINT SEARCH THAT FRANK

JOSEPH SACCHINELLI RELATED TO AN OFFICER OF THE ATLANTA POLICE DEPARTMENT AIRPORT DETAIL THAT THE BRIEFCASE CONTAINED $100,000.00. THIS INFORMATION WAS THEN RELATED TO THE AGENTS OF THE DRUG ENFORCEMENT ADMINISTRATION, WHO RELATED IT TO AFFIANT.

SURVEILLANCE INFORMATION RECEIVED FROM THE DADE COUNTY DEPARTMENT OF PUBLIC SAFETY, ORGANIZED CRIME NARCOTIC UNIT, AIRPORT DETAIL WHO ESTABLISHED SURVEILLANCE ON SACCHINELLI AND STEVENS UPON THEIR ARRIVAL IN MIAMI, FLORIDA ATTORNEY GENERAL'S ORGANIZED CRIME TASK FORCE ASSISTANT STATE ATTORNEY MARTIN DARDIS RECEIVED IN NOVEMBER OF 1978 AND CONFIRMED AGAIN IN MARCH OF 1979, INDICATES THAT SACCHINELLI AND STEVENS WERE IN MIAMI, FLORIDA TO PURCHASE APPROXIMATELY FIVE (5) KILOS OF COCAINE FROM A MAJOR COCAINE SUPPLIER IN MIAMI, FLORIDA.

INFORMATION RECEIVED FROM THE FLORIDA ATTORNEY GENERAL'S ORGANIZED CRIME TASK FORCE, ASSISTANT STATE'S ATTORNEY MARTIN DARDIS, DURING NOVEMBER, 1978, AND AGAIN IN MARCH 1979, INDICATED THAT SACCHINELLI PURCHASED ONE HALF OF THE FIVE (5) KILOS OF COCAINE ON NOVEMBER 1, 1978 AND HAS TO PURCHASE THE REMAINDER OF THE FIVE (5) KILOS THE NEXT DAY ON NOVEMBER 2, 1978.

ON NOVEMBER 3, 1978, SURVEILLANCE OF SACCHINELLI AND STEVENS WAS TERMINATED DUE TO THE FACT THAT THE SURVEILLANCE TEAM OF THE DADE COUNTY DEPARTMENT OF PUBLIC SAFETY WERE UNABLE TO FOLLOW SACCHINELLI AND STEVENS DUE TO TRAFFIC CONDITIONS AND VISUAL SIGHT OF THE VEHICLE IN WHICH THEY WERE IN WAS LOST.

AFFIANT FURTHER SHOWS THE FOLLOWING ACTS AND CIRCUMSTANCES, AS RELATED TO AFFIANT BY AN AGENT OF THE DRUG ENFORCEMENT ADMINISTRATION AND BY MEMBERS OF THE DADE COUNTY, FLORIDA DEPARTMENT OF PUBLIC SAFETY.

1. THAT FRANK JOSEPH SACCHINELLI WHILE IN MIAMI, FLORIDA ON OCTOBER 31, 1978 DID REGISTER AT THE RAMADA INN MOTEL, AT MIAMI INTERNATIONAL AIRPORT, IN ROOMS 206 AND 207.

RAMADA INN TELEPHONE RECORDS REFLECT THAT TELEPHONE CALLS BILLED TO SACCHINELLI DURING HIS STAY SHOW THE FOLLOWING: THAT TELEPHONE NUMBER (404) 943-4264 WAS CALLED TWICE FROM ROOM 206, AT 3:16 P.M. AND 7:32 P.M..

TELEPHONE NUMBER (404) 943-4264 ACCORDING TO RECORDS OBTAINED THROUGH SUBPOENA FROM SOUTHERN BELL TELEPHONE SECURITY IS LISTED TO ONE FORREST A. ROBERTS, 3400 VELMA DRIVE, POWDER SPRINGS, COBB COUNTY, MARIETTA, GEORGIA.

AFFIANT FURTHER SHOWS THAT ON JANUARY 18, 1977 FORREST A. ROBERTS AND JOHN DANIEL BENSON WERE INDICTED BY A FEDERAL GRAND JURY, FOR CONSPIRACY TO IMPORT THREE THOUSAND, THREE HUNDRED, TWENTY (3320) POUNDS OF MARIJUANA IN TALLAHASSEE, FLORIDA, AS RELATED TO AFFIANT BY AGENT M. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION, DURING THE MONTH OF OCTOBER, 1978.

THAT ON APRIL 5, 1977, FORREST A. ROBERTS WAS FOUND NOT GUILTY OF THE ABOVE CHARGES BY A JURY.

AFFIANT FURTHER SHOWS THAT ON THE 5TH DAY OF APRIL, 1977, JOHN DANIEL BENSON, AKA DANNY BENSON WAS FOUND GUILTY IN FEDERAL DISTRICT COURT IN TALLAHASSEE, FLORIDA, ON A TWO COUNT INDICTMENT CHARGING POSSESSION WITH INTENT TO DISTRIBUTE 3320 POUNDS OF MARIJUANA, AND

WITH INTENT TO DISTRIBUTE 3320 POUNDS OF MARIJUANA, AND CONSPIRACY, CODE SECTION 21USC 846 AND 21 USC 841a1. JOHN DANIEL BENSON WAS SENTENCED TO SERVE FIVE YEARS IN PRISON AND TWO YEARS ON PAROLE, AS RELATED TO AFFIANT BY AGENT W. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION, DURING THE MONTH OF OCTOBER, 1978.

2. THAT TOLL RECORD INFORMATION OBTAINED BY SUBPOENA BY AFFIANT, FROM SOUTHERN BELL TELEPHONE SECURITY ON TELEPHONE NUMBER (404) 435-2754 LISTED TO FRANK J. SACCHINELLI, 3042 SPRINGHILL ROAD, S.E., APARTMENT #H, SMYRNA, COBB COUNTY, GEORGIA. AND INFORMATION FURTHER OBTAINED ON NUMBERS THAT WERE CALLED FROM TELEPHONE NUMBER (404) 435-2754 OR CHARGED TO THAT NUMBER REFLECT THE FOLLOWING: THAT NUMEROUS TELEPHONE CALLS WERE MADE TO TELEPHONE NUMBER (404) 834-0061 FROM (404) 435-2754.

TELEPHONE NUMBER (404) 834-0061 IS LISTED TO ATLAS AVIATION, WEST GEORGIA REGIONAL AIRPORT, CARROLLTON, GEORGIA, AS VERIFIED BY AFFIANT THROUGH SOUTHERN BELL TELEPHONE COMPANY RECORDS OBTAINED BY SUBPOENA.

AFFIANT HAS RECEIVED INFORMATION FROM AGENT W. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION AND OTHER FELLOW LAW ENFORCEMENT OFFICERS SINCE DECEMBER, 1976. THAT IN DECEMBER, 1976, A DC-3 AIRCRAFT BEARING IDENTIFICATION (TAIL) NUMBER N11EL WAS SEIZED BY MEMBERS OF THE GEORGIA BUREAU OF INVESTIGATION AND CARROLL COUNTY SHERIFF'S DEPARTMENT AT WEST GEORGIA REGIONAL AIRPORT AND FOUND TO CONTAIN SOME TWO THOUSAND FIVE HUNDRED POUNDS OF MARIJUANA.

FURTHER, AFFIANT SHOWS THAT HE DURING THE INVESTIGATION OF ILLEGAL DRUG TRANSACTIONS, WHILE ACTING IN AN UNDERCOVER CAPACITY, HAS HAD PERSONAL CONVERSATION WITH PERSONS KNOWN TO AFFIANT TO BE DRUG SMUGGLERS WHO HAVE STATED THAT WEST GEORGIA REGIONAL AIRPORT, CARROLLTON, GEORGIA, IS A PLACE TO LAND AIRCRAFT SMUGGLING QUANTITIES OF ILLEGAL DRUGS AND ATLAS AVIATION PERFORMS MAINTENANCE AND PROVIDES STORAGE FOR SUCH PLANES.

AFFIANT FURTHER SHOWS THAT NUMEROUS TELEPHONE CALLS HAVE BEEN MADE FROM (404) 435-2754 TO (714) 494-3310 AND (714) 497-2421, ACCORDING TO RECORDS OF THE SOUTHERN BELL TELEPHONE COMPANY OBTAINED THROUGH SUBPOENA BY AFFIANT.

TELEPHONE NUMBER (714) 494-3310 IS LISTED TO ONE PAMELA MESSINA, 2573 BLUEBIRD CANYON, LAGUANA BEACH, CALIFORNIA, ACCORDING TO MEMBERS OF THE LOS ANGELES, CALIFORNIA POLICE DEPARTMENT AND RELATED TO AFFIANT IN OCTOBER, 1979, AND AGAIN IN THE MONTH OF JANUARY, 1980.

AFFIANT FURTHER SHOWS THAT TELEPHONE NUMBER (714)497-2421 IS LISTED TO LAGUANA BEACH REAL ESTATE AND CONSTRUCTION, 580 BROADWAY, LAGUANA BEACH, CALIFORNIA. THIS IS THE BUSINESS ADDRESS OF ONE SAM SARCINELLI, ACCORDING TO MEMBERS OF THE LOS ANGELES CALIFORNIA POLICE DEPARTMENT AND RELATED TO AFFIANT IN OCTOBER, 1979, AND AGAIN IN JANUARY, 1980.

AFFIANT FURTHER SHOWS THAT ON THE 19TH DAY OF JUNE, 1979, AGENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION DID SEIZE APPROXIMATELY THIRTEEN AND TWO-TENTHS POUNDS OF COCAINE

AND APPROXIMATELY $55,000.00 OF U. S. CURRENCY IN THE POSSESSION OF SAM SARCINELL, PAMELA MESSINA, AND ANOTHER INDIVIDUAL AT THE HOLIDAY INN NORTH, 4900 POWER LINE ROAD, FT. LAUDERDALE, FLORIDA, ROOM 216 AND ROOM 214. AFFIANT STATES THAT AGENTS OF THE DRUG ENFORCEMENT ADMINISTRATION RELATED THIS INFORMATION TO AFFIANT DURING THE MONTH OF JUNE, 1979.

AFFIANT ALSO SHOWS THAT ON THE 19TH DAY OF JUNE, 1979, A TELEPHONE CALL WAS PLACED FROM ROOM 216, HOLIDAY INN NORTH, 4900 POWER LINE ROAD, FT. LAUDERDALE, FLORIDA, TO (404) 435-2754.

AFFIANT FURTHER SHOWS THAT ON THE 19TH DAY OF JUNE, 1979, A TOTAL OF SIX TELEPHONE CALLS WERE PLACED TO (305) 776-4830, EITHER FROM (404) 435-2754 OR FROM ANOTHER TELEPHONE NUMBER AND BILLED TO (404) 435-2754, ACCORDING TO RECORDS OBTAINED FROM SOUTHERN BELL TELEPHONE COMPANY THROUGH SUBPOEAN BY AFFIANT.

AFFIANT SHOWS THAT (305) 776-4880 IS LISTED TO THE HOLIDAY INN NORTH, 4900 POWER LINE ROAD, FORT LAUDERDALE, FLORIDA, AS PERSONALLY VERIFIED BY AFFIANT IN THE MONTH OF JUNE, 1979, AND AGAIN IN JANUARY, 1980.

AFFIANT FURTHER SHOWS THAT ON THE 24TH DAY OF AUGUST, 1979, SAM SARCINELLI AND PAMELA MESSINA, ALONG WITH ANOTHER INDIVIDUAL WERE INDICTED BY FEDERAL GRAND JURY ON CHARGES OF CONSPIRACY AND POSSESSION WITH INTENT TO DISTRIBUTE APPROXIMATELY THIRTEEN AND TWO-TENTHS POUNDS OF COCAINE. THE ABOVE INFORMATION RELATED TO AFFIANT BY MEMBERS OF THE DRUG ENFORCEMENT ADMINISTRATION IN THE MONTH OF SEPTEMBER, 1979, AND AGAIN IN JANUARY, 1980.

ON JANUARY 16, 1980, AT APPROXIMATELY 6:45 P.M., AFFIANT PERSONALLY TELEPHONED (404) 435-2754 TO AGAIN VERIFY THAT (404) 435-2754 WAS A WORKING NUMBER.

AFFIANT RECEIVED A RECORDED MESSAGE THAT THE ABOVE TELEPHONE NUMBER, (404) 435-2754, HAD BEEN TEMPORARILY DISCONNECTED.

ON JANUARY 17, 1980, AFFIANT CONTACTED SOUTHERN BELL TELEPHONE COMPANY SECURITY AND WAS ADVISED THAT TELEPHONE NUMBER (404) 435-2754 HAD BEEN TEMPORARILY DISCONNECTED ON JANUARY 8, 1980, FOR NON-PAYMENT OF BILL.

ON FEBRUARY 25, 1980, AFFIANT PERSONALLY TELEPHONED (404) 435-2754 AT APPROXIMATELY 1:30 P.M., AND FOUND THAT THE NUMBER WAS A WORKING NUMBER AND WAS ANSWERED BY A MALE VOICE.

ON FEBRUARY 25, 1980, AFFIANT CONTACTED SOUTHERN BELL TELEPHONE COMPANY SECURITY AND WAS ADVISED THAT (404) 435-2754 HAD BEEN RE-CONNECTED ON FEBRUARY 22, 1980, IN THE NAME OF FRANK J. SACCHINELLI AT 3042 SPRINGHILL ROAD, S.E., APARTMENT H, SMYRNA, COBB COUNTY, GEORGIA.

DURING THE PERIOD FROM JANUARY 16, 1980, THROUGH FEBRUARY 25, 1980, AFFIANT HAS PERSONALLY CONDUCTED PERIODIC CHECKS OF TELEPHONE NUMBER (404) 435-2754 BY TELEPHONING SAID NUMBER AND ON ALL OCCASIONS HAS RECEIVED A RECORDED MESSAGE STATING THAT THE TELEPHONE WAS TEMPORARILY DISCONNECTED, WITH THE EXCEPTION OF FEBRUARY 25, 1980, AT APPROXIMATELY 1:30 P.M. WHEN AFFIANT DETERMINED THAT THE TELEPHONE HAD BEEN RE-CONNECTED.

AFFIANT FURTHER SHOWS THAT ON JANUARY 18, 1980, HE RECEIVED FROM AGENT W. J. PADGETT, GEORGIA BUREAU OF INVESTIGATION, INFORMATION FURNISHED TO AGENT PADGETT BY UNITED STATES CUSTOMS AGENT JOHN ROBERTSON THAT SAME DATE. THIS INFORMATION SHOWS THAT ON JANUARY 18, 1930, A CESSNA 310 TWIN ENGINE AIRCRAFT, MAROON AND WHITE IN COLOR, BEARING AIRCRAFT IDENTIFICATION (TAIL NUMBER) N69673 HAD LANDED AT ANDERSON, SOUTH CAROLINA WITH AN AIRCRAFT FROM THE AIR WING PATROL UNIT OF THE UNITED STATES CUSTOMS SERVICE IN AIRBORNE SURVEILLANCE WHICH SUBSEQUENTLY LANDED AT THE SAME AIRPORT.

AGENT ROBERTSON FURTHER RELATED TO AGENT PADGETT WHO RELATED TO AFFIANT THAT THE ABOVE CESSNA AIRCRAFT WAS TRACKED BY AIRBORNE RADAR OF THE UNITED STATES CUSTOMS SERVICE INTO UNITED STATES AIRSPACE FROM THE CARIBBEAN ISLANDS. SURVEILLANCE WAS ESTABLISHED TO APPREHEND THE CESSNA AIRCRAFT FOR ILLEGAL ENTRY INTO THE UNITED STATES WITHOUT PRIOR UNITED STATES CUSTOMS CLEARANCE.

FURTHER, AGENT ROBERTSON RELATED TO AGENT PADGETT WHO HAS RELATED TO AFFIANT THAT UPON LANDING AT ANDERSON, SOUTH CAROLINA, THE ABOVE CESSNA AIRCRAFT TOOK ON ADDITIONAL FUEL. THE SURVEILLING UNITED STATES CUSTOMS AIRCRAFT ATTEMPTED TO STOP DEPARTURE OF THE CESSNA AIRCRAFT BY BLOCKING THE ACTIVE RUNWAY. UPON THE SURVEILLANCE AIRCRAFT PULLING INTO THE BLOCKING POSITION, THE CESSNA AIRCRAFT DID TURN ONTO A GRASS TAXIWAY AND THEN AGAIN BECOME AIRBORNE AND ELUDED THE UNITED STATES CUSTOMS AIRCRAFT.

FURTHER, CONSIDERING ALL THE SAID CIRCUMSTANCES AFFIANT HAS PROBABLE CAUSE TO BELIEVE THAT THE SAID FRANK JOSEPH SACCHINELLI HAS COMMITTED, IS COMMITTING, AND IS ABOUT TO COMMIT THE CRIME OF VIOLATION OF GEORGIA CONTROLLED SUBSTANCES ACT, IN VIOLATION OF THE PENAL LAWS OF GEORGIA.

AFFIANT ALSO HAS PROBABLE CAUSE TO BELIEVE THAT THE FOLLOWING TYPE OF COMMUNICATIONS SOUGHT TO BE INTERCEPTED WILL BE ENGAGED IN BY THE AFORESAID PERSONS, TO-WIT: ALL DISCUSSIONS CONCERNING SAID OFFENSE, INCLUDING BUT NOT LIMITED TO THE TRANSPORTATION, RECEIPT, PURCHASE AND STORAGE OF COCAINE, THE RETAIL AND WHOLESALE PRICE OF COCAINE TO BE PURCHASED AND SOLD; THE PLACES WHERE COCAINE IS TO BE PURCHASED, SOLD, OR TRANSFERRED; POTENTIAL DISTRIBUTORS OR PURCHASORS OF COCAINE; THE IDENTITIES OF OTHER CONSPIRATORS AND ACCOMPLICES ENGAGED IN THE ILLEGAL TRAFFIC OF COCAINE; AND THE ACTIVITIES OF LAW ENFORCEMENT AGENCIES CHARGED WITH INVESTIGATING SAID OFFENSE.

AFFIANT MAKES THIS AFFIDAVIT FOR THE INFORMATION OF THOMAS J. CHARRON, DISTRICT ATTORNEY OF THE COBB JUDICIAL CIRCUIT, TO BE ANNEXED AS AN EXHIBIT TO HIS PETITION FOR AN INVESTIGATION WARRANT TO INTERCEPT, OVERHEAR AND RECORD CONVERSATIONS BETWEEN FRANK JOSEPH SACCHINELLI, THOMAS STEVENS, FORREST A. ROBERTS, JOHN DANIEL BENSON, SAM SARCINELLI, PAMELA MESSINA AND OTHER UNKNOWN PERSONS, BECAUSE:

(A) OTHER INVESTIGATION PROCEDURES HAVE BEEN TRIED AND FAILED;

(B) BECAUSE OF THE SECRECY WITH WHICH SAID PERSONS CONDUCT SUCH UNLAWFUL ENTERPRISES OTHER INVESTIGATIVE PROCEDURES REASONABLY APPEAR TO BE UNLIKELY TO SUCCEED;

AFFIANT SHOWS THAT IT IS NECESSARY, IN ORDER TO OVERHEAR, INTERCEPT AND RECORD CONVERSATIONS OF THE AFORESAID PERSONS CONCERNING THE AFORESAID OFFENSE, TO USE AND EMPLOY CERTAIN HEREINAFTER DESCRIBED DEVICES, INSTRUMENTS AND APPARATUS, TO-WIT: A "LEASED" LINE, ATTACHED DIRECTLY TO THE TERMINAL BOX OF TELEPHONE NUMBER (404) 435-2754, LOCATED AT 3042 SPRINGHILL ROAD, S. E., APARTMENT NUMBER H, IN THE APARTMENT COMPLEX KNOWN AS POST LAKE APARTMENTS, IN SMYRNA, COBB COUNTY, GEORGIA, WHEREIN THE LINES TO SAID TELEPHONE ARE RUN, THENCE TO THE MAIN TELEPHONE CONNECTING TRUNK LINE, THENCE TO A REMOTE LOCATION IN COBB COUNTY, GEORGIA, AND ATTACHED AT THIS LOCATION TO AN ELECTRONIC MONITORING DEVICE, TAPE RECORDERS AND DIGITAL NUMBER RECORDER, SAID DEVICE TO BE ACTIVATED AND BEGIN TRANSMISSION WHENEVER THE ABOVE MENTIONED TELEPHONE OR ITS EXTENSIONS IS REMOVED FROM ITS CRADLE AND TO AUTOMATICALLY CEASE RECORDING UPON THE RETURN OF SAID TELEPHONE OR ITS EXTENSIONS TO SAID CRADLE.

AFFIANT FURTHER SHOWS THAT THE EXIGENCIES OF THE SITUATION OVERCOME AND OVERRIDE THE NEED FOR GIVING NOTICE OF SURVEILLANCE TO FRANK JOSEPH SACCHINELLI, THOMAS STEVENS, FORREST A. ROBERTS, JOHN DANIEL BENSON, SAM SARCINELLI, AND PAMELA MESSINA FOR THE FOLLOWING REASONS, TO-WIT:

(A) THE SUSPECTS MAY FLEE THIS JURISDICTION;

(B) DISPOSE OF EVIDENCE;

(C) TERMINATE USAGE OF THE ABOVE LISTED TELEPHONE;

(D) TERMINATE OR REMOVE FROM DETECTION ANY FURTHER OPERATION OF THE AFOREMENTIONED CRIMINAL

ENTERPRISE IN THIS JURISDICTION;

(E) NOTIFY AND ALERT OTHER KNOWN AND UNKNOWN CO-CONSPIRATORS, ASSOCIATES, AND ACCOMPLICES WHO ARE PART AND PARCEL OF THE CRIMINAL ENTERPRISE SO AS TO FRUSTRATE FURTHER INVESTIGATION.

C. R. Pierce

AFFIANT

additional oral testimony received & sworn.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF FEBRUARY, 1980.

JUDGE, COBB SUPERIOR COURT
COBB JUDICIAL CIRCUIT

D-12

THE STATE OF GEORGIA

— versus —

IKE SMATHERS

IN THE SUPERIOR COURT
FOR THE COUNTY OF COBB
STATE OF GEORGIA

CASE NO. .....

To: Southern Bell
Atlanta, Georgia

That, laying all other business aside, you be and appear at the next Superior Court, to be held in and for said County in Courtroom A, 4th Floor, Cobb Judicial Building, Marietta, Georgia, on the 22nd day of February, 19 80, at 9:00 o'clock A.M. and bring with you to produce in said Court the following:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Smyrna Police Dept., it is requested that your company furnish subscriber and toll record information listing calls made, calls received, names and addresses, and other available information pertaining to the attached phone numbers. The time involved being the date they where assigned to these individuals up to and including the present date. You are not to disclose the existence of this request for a period of 90 days from the date of this request. Any such disclosure could impede the investigation being conducted. In Lieu of appearance, you may provide this information to Steve Needles of the Smyrna Police Dept.

to be used in evidence by THE STATE

Herein Fail Not Under the Penalty of the Law.

Witness the Honorable Howell C. Ravan, Luther C. Hames, Jr., James L. Bullard and Watson L. White, Judges of said Court.

Given under my hand and the official seal of this office, this 22nd day of February, 19 80

Deputy Clerk, Cobb Superior Court
Cobb Judicial Circuit

(SEAL)

D-13

11-1-78

RECORD OF RELEASE OF TOLL INFORMATION

I. SUBSCRIBER INFORMATION

Listing Frank Iacobinelli Telephone No. 404-952-8573

Service Address 2845 Powers Ferry Rd, SE. Apt 610 Marietta 30062

Billing Name and Address (if different) _____

II. CERTIFICATION Yes ✓ No _____

III. SUBSCRIBER NOTIFICATION

Oral: Date Called _____ Contacted _____ (Yes - No) If no, reason _____

Letter: Date Mailed _____

IV. COMPLIANCE INFORMATION

Person Serving Subpoena Bob Pierce, Cobb Co. Police Dept. (Name and Agency)

Name of Security Employee Served _____

In Person ✓ By Mail _____ Date Received 1/15/79

Inclusive Dates of Records Furnished 12/12/78 - 1/10/79

Date Records Were Furnished or Date Mailed 1/23/78

To Whom Bob Pierce, Cobb Co. Police Dept. (Name and Agency)

By Who Debra Bridges (Name) (Title) Marietta (Location)

Original Records _____ Copies ✓

V. SUBPOENAS SERVED ON COMMERCIAL

Commercial Employee Served 424-7727 Debra Bridges (Name) (Title) Marietta (District)

Date Subpoena Reviewed by Telephone 1/15/79 Reviewed by Who Mary Ann Faulkner

VI. SUBPOENAS SERVED ON SECURITY

Commercial employee furnishing subscriber information _____

Telephone No. _____ Date _____ District _____

VII. SUBSCRIBER INQUIRY

Date Inquiry Received _____ From Who _____

Address _____ Telephone No. _____

Certification Still in Effect Yes ✓ No _____

Subscriber advised Orally _____ In Writing _____ Date _____

No Subpoena Attached, See File Captioned _____

✓ 20-97-1508-DEAD

THE STATE OF GEORGIA

VS.

IKE SMATHERS

IN THE SUPERIOR COURT
FOR THE COUNTY OF COBB
STATE OF GEORGIA

CASE NO. _____

TO SOUTHERN BELL
WHITLOCK AVENUE
MARIETTA, GEORGIA

That, laying all other business aside, you be and appear at the next Superior Court, to be held in and for said County in Courtroom A, 4TH Floor, Cobb Judicial Building, Marietta, Georgia on the 15TH day of JANUARY 19 79, at 5:00 o'clock P.M. and bring with you to produce in said Court the following: PURSUANT TO AN INVESTIGATION BEING CONDUCTED BY THE COBB COUNTY POLICE DEPARTMENT, FOR A SUSPECTED FELONY, IT IS REQUESTED THAT YOUR COMPANY FURNISH SUBSCRIBER AND TOLL INFORMATION FOR THE FOLLOWING TELEPHONE NUMBER: 952-8573 FOR THE PERIOD OF DECEMBER 11, 1978 THROUGH JANUARY 11, 1979. YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS SUBPOENA FOR A PERIOD OF 90 DAYS FROM THE DATE OF THIS REQUEST. IN LIEU OF YOUR APPEARING IN COURT ON THE ABOVE DATE, THIS INFORMATION CAN BE FURNISHED TO DET. BOB PIERCE OF THE COBB COUNTY POLICE DEPARTMENT.

To be used in evidence by THE STATE

Herein Fail No Under the Penalty of the Law

Witness, the Honorable Howell C. Ravan, Luther C. Hames, Jr., and James L. Bullard, Judges of said Court.

Given under my hand and the official seal of this office, this 15TH day of JANUARY, 19 79.

118

DEPUTY CLERK, COBB SUPERIOR COURT
COBB JUDICIAL CIRCUIT

R. E. HIGHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 422-5420

April 10, 1979

Ms. Mary Ann Foulks
Southern Bell, Security Division
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. Foulks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we received toll record information for the telephone number 952-8573. At that time, we directed you not to disclose the existence of such request for a period of ninety (90) days.

Inasmuch as this investigation continues, we are hereby requesting you not to disclose the existence of this request for another ninety (90) days from the date of this letter. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Sincerely,

Karen L. Conner

Agent Karen L. Conner
Special Investigations Div.

KLC/kc

R. E. HIGHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 422-5420

June 26, 1979

Mrs. Mary Ann Foulks
Southern Bell Security
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Ga. 30329

Dear Mrs. Foulks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we requested toll record information on the telephone numbers on the attached page.

Inasmuch as this investigation continues, it is requested that the disclosure of these request be extended of another ninety days from the date of this letter. Any such disclosure could interfere with the enforcement of the law.

Sincerely,

Lauren L. Conner

Agt. K.L. Conner
Special Investigations Division

KLC/sm

PAGE TWO:

Telephone Numbers:

952-8573
237-9158
261-6350
394-3840
427-7168
445-4062
876-4421
892-9121
892-9144
233-9250
233-9187
434-6044
952-5257
873-2766
227-5151
948-4801
952-9338
973-1107
941-6413
934-7824
434-7824
428-5141
427-4128
427-7168
261-6350
445-4062
255-2311
255-0276
971-9146
953-0962
436-1440
436-7469
436-6817
428-9764
325-7876
428-7697
477-7699
455-9551
876-4421
242-5624
422-3975
422-3992
422-1635
432-8465
688-8045

R. E. HIGHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 422-5420

August 31, 1979

Mrs. Mary Ann Foulks
Southern Bell, Security Division
#7 Executive Park Dr. N.E.
Room 310
Atlanta, Georgia 30329

Dear Mrs. Foulks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we requested toll record information on the telephone numbers on the attached page. At that time, we directed you not to disclose the existence of this request for a period of ninety days. Inasmuch as this investigation continues, we are hereby requesting you not to disclose the existence of this request for another ninety days. Any such disclosure could impede this investigation and thereby interfere with the enforcement of the law.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Karen Connor

Agent Karen L. Connor
Special Investigations Div.

KLC/kc

793-5600
834-0061
881-6788
422-0745
427-7168
255-2329
952-3796
926-7234
973-7139
691-0274
252-5674
938-8619
422-0746
939-7852
876-5376
491-0736
478-6666
434-4922
977-2968
237-7977
973-1107
428-9764
422-3975
422-3992
971-9146
428-5141
427-7168
953-0962
941-6413
434-7824
427-4128
445-4062
952-5257
428-7697
394-5840
227-5181
876-4421
952-8573
948-4801
688-8045
436-7469
434-6817
432-8465
261-6350
873-2766
934-7824
477-7699
255-0276
255-2311

422-1635
427-7168
477-1323
876-4421
948-0452
428-2726
944-9123
832-2211
434-9004
261-9873
892-9121
892-9144

R. E. HIGHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 422-5420

November 1, 1979

Southern Bell Security
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Ms. Wilbanks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we requested toll record information for the telephone numbers on the attached page. At that time, we directed you not to disclose the existance of this request for a period of ninety (90) days.

Inasmuch as this investigation continues, you are hereby requested not to disclose the existence of this request for another ninety (90) days from the date of this letter. Any such disclosure could impede this investigation and thereby interfere with the enforcement of the law.

Sincerely,

Karen L. Conner

Agent Karen L. Conner, Analyst
Special Investigations Division

432-8665
881-8128
881-0833
949-6864
943-4264
325-7876
422-0745
483-6984
483-4823
266-1948
948-0452
428-2726
832-2211
944-9123
955-6757
351-5936
977-2[illegible]48
992-0548
428-8742
351-8449
355-8397
656-8529 656-8513
658-1475
881-1102
885-1200
943-2226
872-0350
875-1781
875-4070
373-4678

If I have neglected any numbers due for re-certification, please do not notify the subjects; I will give you a letter.

Thank you.

Karen Conner

R. E. HIGHTOWER
Director

140 Page Street
Marietta, Georgia 30060
(404) 422-1420

February 1, 1980

Ms. Diane McCook
Southern Bell
87 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. McCook,

Pursuant to a criminal investigation of a suspected felony being conducted by the Cobb County Police Department, toll record information was subpoenaed on the telephone numbers on the attached pages. At that time, we directed you not to disclose the existence of this request for a period of ninety days.

Inasmuch as this investigation continues, it is requested that this information not be disclosed for another ninety days from the date of this letter.

Any disclosure could impede this investigation and therefore interfere with the enforcement of the law.

Sincerely,

Karen L. Conner

Agt. Karen L. Conner
Special Investigations Div.

422- 1614	812 3223
943- 4264	478- 4664
428- 7697	437- 2019
445- 4962	941- 9217
432- 9214	352- 1337
952- 5674	432 [illegible]
428- 3764	961- [illegible]
445- 4062	
675- 1781	
413- 6914	
373- 4678	
943- 2226	
421- 7697	
413- 4822	
227- 5151	
435- 4754	
340- 3240	
432- 8665	
491- 0736	
176- 4421	
261- 6350	
321- 1664	
463 1933	
427- 7168	
826- 4124	
434- 4612	
409- 4151	
992- 1493	
499- 3245	
948- 4201	
923- [illegible]	

R. E. HIGHTOWER
Director

148 Page Street
Marietta, Georgia 30060
(404) 422-1420

May 1, 1980

Ms. Diane McCook
Southern Bell
47 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. McCook,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Dept., we requested toll record information on the telephone numbers on the attached page. At that time, we directed you not to disclose the existence of this request for a period of ninety days.

In as much as this investigation continues, we are hereby requesting that you do not disclose the existence of this request for another ninety days. Any such disclosure could impede this investigation and thereby interfere with the enforcement of the law.

Thank you for your cooperation in this matter.

Sincerely,

Karen Connar

Agent Karen L. Connar
Special Investigations Division

May 1, 1930

876-4421	873-2766	636-8513
452-1343	939-7857	773-7139
351-6217	825-7876	952-5257
943-2226	261-6350	891-1102
432-8665	423-8743	691-0274
491-0736	456-8529	971-6096
427-5151	261-6350	432-9349
875-1781	876-5376	351-3128
394-3840	422-1635	781-0833
252-5674	231-1667	445-4163
394-3840	355-0376	824-7234
434-8365	255-2211	427-4139
429-5572	944-9123	477-1323
482-6571	435-2754	941-9217
351-8449	434-4912	266-1948
355-8397	933-8619	941-0452
421-7697	872-0350	351-5936
483-4823	473-6666	977-2943
992-0548	436-7365	255-2329
992-1446	436-6317	237-9799
433-1938	943-4501	941-6413
876-4421	684-8245	953-0263
421-7697	952-8573	434-7624
428-	934-7824	395-1226
833-2241	477-3699	949-4151
943-4264	432-8465	971-9146
943-4264	373-4678	998-1272
934-7824	658-1475	955-6757

427-7168
947-6364
427-7168
422-6745
428-5741
422-7168
423-3995
442-3992
422-1614
428-9764
483-6984
973-1107
432-3732
971-5755
971-5756
971-1762
971-3199
971-4121
436-4425
432-3614
428-3066
955-5614
321-3069
636-3060
948-9471
948-5647
974-9003

944-9827
973-1598
955-5962
973-6579
424-1913
436-4775
435-3543
432-4724
943-4643
428-8742
439-4657
428-7866

R. E. HIGHTOWER
Director

140 Page Street
Marietta, Georgia 30060
(404) 422-1420

AUGUST 1, 1980

Southern Bell Security
125 Perimeter Center West
Room 136
Atlanta, GA 30346

Dear Ms. Foulks,

Pursuant to a criminal investigation of a suspected felony being conducted by the Cobb County Police Deaprtment, toll record information was subpoenaed on the telephone numbers on the attached page. At this time, we directed you not to disclose the existence of this request for a period of ninety days.

Inasmuch as this investigation continues, it is requested that this information not be disclosed for another ninety days from the date of this letter.

Any such disclosure could impede this investigation and therefore interfere with the enforcement of the law.

Sincerely,

Lynn Moore

Lynn Moore
Special Investigations Div.

NUMBERS TO RE-CERTIFY AUGUST 1, 1980

973-1107
483-6984
422-1614
428-9764
974-9003
422-3975
422-3992
434-8687
955-5614
971-3199
432-3614
955-6757
971-1762
424-1993
971-5755
971-5756
998-1272
321-3069
971-9146
428-5141
427-7168
422-0745
949-6864
885-1220
428-2066
941-6413
237-9799
434-7824
953-0263
949-4151
422-7155
436-4025
255-2329
577-2948
351-5936
948-0432
266-1948
636-3069
341-9217
477-1323
432-4721
427-4128
926-7234
455-4062
435-3543
881-8128
881-0833
973-7139
881-1102
952-5257
955-5962
691-0274
971-6096
432-9349
944-8827
658-1475
656-8513
373-4678
483-4823
428-[illegible]97
351-[illegible]449
355-8397
973-6579
973-1598
943-4643
427-5572
427-5571
436-6775
434-8365
748-5647
955-0106
394-3840
252-5674
875-1781
227-5151
948-9471
432-8665
491-0736
943-2226
971-4131
351-6217
432-1343
876-4421
432-2732
433-1938
992-0548
992-1440
943-4264
952-8573
435-2754
948-4801
688-8045
436-7469
436-68[illegible]7
478-6666
872-0350
432-8465
938-8619
434-4922
261-6350
325-7876
428-8742
939-7852
873-2766
428-8766
477-7699
934-7824
832-2211
944-9123
255-0276
255-2311
876-3376
422-1635
231-1664
656-8529

11-9-80

RECORD OF RELEASE OF TOLL INFORMATION

I. SUBSCRIBER INFORMATION

Listing FRANK J. SACCHINELLI Telephone No. 404-435-2751

Service Address 3042 SPRINGHILL RD. APT H. SMYRNA, GA 3008

Billing Name and Address (if different) _____

II. CERTIFICATION Yes ✓ No _____

III. SUBSCRIBER NOTIFICATION

Oral: Date Called _____ Contacted _____ (Yes - No) If no, reason _____

Letter: Date Mailed _____

1822

IV. COMPLIANCE INFORMATION

Person Serving Subpoena KAREN CONNER, Cobb Co. P.D. (Name and Agency)

Name of Security Employee Served DIANE McCOOK

In Person _____ By Mail ✓ Date Received 11/16/79

Inclusive Dates of Records Furnished 10/8/79 - 11/8/79

Date Records Were Furnished or Date Mailed 11/19/79

To Whom Karen Conner, Cobb Co. P.D. (Name and Agency)

By Who Diane McCook Sec.-Stena Atlanta (Name) (Title) (Location)

Original Records _____ Copies ✓

V. SUBPOENAS SERVED ON COMMERCIAL

Commercial Employee Served _____ (Name) (Title) (District)

Date Subpoena Reviewed by Telephone _____ Reviewed by Who _____

VI. SUBPOENAS SERVED ON SECURITY

Commercial employee furnishing subscriber information _____

Telephone No. _____ Date _____ District _____

VII. SUBSCRIBER INQUIRY

Date Inquiry Received _____ From Who _____

Address _____ Telephone No. _____

Certification Still in Effect Yes _____ No _____

Subscriber advised Orally _____ In Writing _____ Date _____

No Subpoena Attached, See File Captioned _____

20-99-1822-DC-0

THE STATE OF GEORGIA

VS.

IKE SMATHERS

IN THE SUPERIOR COURT
FOR THE COUNTY OF COBB
STATE OF GEORGIA

CASE NO. _____

SOUTHERN BELL TELEPHONE COMPANY
SECURITY DIVISION
ROOM 320 EXECUTIVE PARK
TO ATLANTA,GEORGIA

That, laying all other business aside, you be and appear at the next Superior Court, to be held in and for said County in Courtroom A, 4th Floor, Cobb Judicial Building, Marietta, Georgia on the 19 day of NOVEMBER 19 79, at 3:00 o'clock P. M. and bring with you to produce in said Court the following: PURSANT TO AN OFFICIAL INVESTIGATION BEING CONDUCTED BY THE COBB COUNTY POLICE DEPARTMENT,FOR A SUSPECTED FELONY, IT IS REQUESTED THAT YOUR COMPANY FURNISH SUBSCRIBER AND TOLL RECORD INFORMATION FOR TELEPHONE NUMBER 435-2754 FOR THE DATES OF SEPTEMBER 10,1979 THROUGH THE CURRENT BILLING

YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS REQUEST FOR A PERIOD OF NINETY DAYS.ANY SUCH DISCLOSURE COULD IMPEDE THIS INVESTIGATION

IN LIEU OF YOUR APPEARING IN COURT ON THE ABOVE DATE,THIS INFORMATION CAN BE FURNISHED TO SGT.D.T.PHILLIPS OF THE COBB COUNTY POLICE DEPARTMENT

E. E. HIGHTOWER
Director

148 Page Street
Marietta, Georgia 30060
(404) 422-1420

February 1, 1980

Ms. Diane McCook
Southern Bell
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. McCook,

Pursuant to a criminal investigation of a suspected felony being conducted by the Cobb County Police Department, toll record information was subpoenaed on the telephone numbers on the attached pages. At that time, we directed you not to disclose the existence of this request for a period of ninety days.

Inasmuch as this investigation continues, it is requested that this information not be disclosed for another ninety days from the date of this letter.

Any disclosure could impede this investigation and therefore interfere with the enforcement of the law.

Sincerely,

Karen L. Conner

Agt. Karen L. Conner
Special Investigations Div.

351- [illegible]	943- [illegible]
772- 7158	952- [illegible]
881- 8127	355- [illegible]
831- 0732	855- 2311
[illegible]	[illegible]
837- 9779	676- [illegible]
926- 7234	942- [illegible]
452-1242	691- [illegible]
261- 6250	953- [illegible]
428- 9742	881- [illegible]
941- 6413	[illegible]
351-6219	325- [illegible]
394- 3196	993- [illegible]
477- 1323	421- [illegible]
427- 7168	971- [illegible]
427- [illegible]	[illegible]
753- 6363	432- [illegible]
351- 5926	971- [illegible]
255- 9229	427- 7168
977- [illegible]	946- [illegible]
939- 7152	972- 1187
944- 5123	978- [illegible]
[illegible]	955- [illegible]
948- 6452	443- [illegible]
[illegible]	432- [illegible]
477- 9679	436- [illegible]
432- 1635	426- [illegible]
636- 6529	638- 1475
[illegible]	427- 7168
[illegible]	433- [illegible]
[illegible]	[illegible]
946- [illegible]	515- 1230

422- [illegible]
943- 4264
421- 7697
445- 4862
432- 9[illegible]
952- 5674
438- 7764
445- 4862
475- 4781
483- 6914
373- 4678
743- 2226
421- 7697
483- 4822
229- 5151
435- 3754
340- 3740
432- 8665
491- 0736
476- 4421
261- 6350
321- 1664
423 1937
427- 7168
376- 4124
434- 4632
449- 4151
992- 1492
[illegible]
548- 4341
423- [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

L. R. HIGHTOWER
Director

148 Page Street
Marietta, Georgia 30060
(404) 422-1420

May 1, 1980

Ms. Diane McCook
Southern Bell
47 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. McCook,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Dept., we requested toll record information on the telephone numbers on the attached page. At that time, we directed you not to disclose the existence of this request for a period of ninety days.

In as much as this investigation continues, we are hereby requesting that you do not disclose the existence of this request for another ninety days. Any such disclosure could impede this investigation and thereby interfere with the enforcement of the law.

Thank you for your cooperation in this matter.

Sincerely,

Karen Conner

Agent Karen L. Conner
Special Investigations Division

May 1, 1930

876-4421	873-2746	656-8513
452-1303	939-7857	773-7139
351-6217	825-7876	953-5257
943-2226	261-6350	891-1102
432-8665	423-8742	691-0274
491-0736	456-7529	971-6096
227-5151	261-6350	432-9349
875-1781	876-5376	851-3128
394-3840	422-1635	581-0533
252-5674	331-1664	445-4063
394-3840	255-0376	824-7234
434-8365	955-2311	427-4139
429-5572	944-7123	477-1323
487-6571	435-4754	941-9217
351-8449	434-4922	266-1948
355-8397	938-8619	941-0452
421-7697	372-0350	351-5936
463-4823	473-6666	977-3943
992-0348	436-7465	355-2329
992-1441	436-6317	237-9999
433-1938	949-4501	941-6413
876-4421	688-8245	953-0263
421-7697	952-8573	434-7624
428-	934-7834	395-1220
332-3241	477-7699	949-4151
943-4264	432-8465	991-9146
943-4264	373-4678	993-1872
934-7824	658-1475	955-6757

427-7168
949-6364
427-7168
422-6745
431-5141
427-7168
433-3995
442-3992
422-1614
428-9764
433-6984
973-1107
432-3732
971-5955
971-5756
971-1762
971-3199
971-4121
436-4125
432-3614
428-2066
955-5614
321-3069
636-3060
948-9471
948-5647
974-9003

944-8827
973-1578
955-5962
973-6579
424-1973
436-4775
435-3542
432-4721
943-4643
428-8742
434-4017
428-2766

E. R. HIGHTOWER
Director

140 Page Street
Marietta, Georgia 30060
(404) 422-1420

AUGUST 1, 1980

Southern Bell Security
125 Perimeter Center West
Room 136
Atlanta, GA 30346

Dear Ms. Foulks,

Pursuant to a criminal investigation of a suspected felony being conducted by the Cobb County Police Deaprtment, toll record information was subpoenaed on the telephone numbers on the attached page. At this time, we directed you not to disclose the existence of this request for a period of ninety days.

Inasmuch as this investigation continues, it is requested that this information not be disclosed for another ninety days from the date of this letter.

Any such disclosure could impede this investigation and therefore interfere with the enforcement of the law.

Sincerely,

Lynn Moore

Lynn Moore
Special Investigations Div.

NUMBERS TO RE-CERTIFY AUGUST 1, 1980

973-1107
481-6984
422-1614
428-9764
974-9003
422-3975
422-3992
434-8687
955-3614
971-3199
432-3614
955-6757
971-1762
424-1993
971-5755
971-5756
998-1272
321-3069
971-9146
428-5141
427-7168
422-0745
949-6864
885-1220
428-2066
941-6413
237-9799
434-7824
953-0263
949-4151
422-7155
436-4025
255-2329
977-2948
351-5936
948-0452
266-1968
636-3069
941-9217
477-1323
432-4721
427-4128
926-7234
455-4062
435-3543
881-8128
881-0833
973-7139
881-1102
952-5257
953-5962
691-0274
971-4096
432-9349
944-8827
658-1475
656-8513
373-4678
483-4823
428-[illegible]97
351-[illegible]49
355-8397
973-6579
973-1598
943-4843
427-5572
427-5571
436-6775
434-8365
748-5647
955-0106
394-3840
252-5674
875-1781
227-5151
948-9471
432-8665
491-0736
943-2226
971-4131
351-6217
452-1343
876-4421
432-2732
433-1938
992-0548
992-1440
943-4264
952-8573
435-2754
948-4801
688-8045
436-7469
436-6817
478-6666
872-0350
432-8465
938-8619
434-4922
261-6350
325-7876
428-8742
939-7852
873-2766
428-8766
477-7699
934-7824
832-2211
944-9123
255-0276
255-2311
876-5376
422-1635
231-1664
656-8529

11-4-80

RECORD OF RELEASE OF TOLL INFORMATION

I. SUBSCRIBER INFORMATION

Listing Frank Iacobinelli (NP) Telephone No. 404-952-2573

Service Address 2845 Powers Ferry Rd, SE, Marietta, Ga. 30062 Apt. 800-10

Billing Name and Address (if different) _____

II. CERTIFICATION Yes ✓ No _____

III. SUBSCRIBER NOTIFICATION

Oral: Date Called _____ Contacted _____ (Yes - No) If no, reason _____

Letter: Date Mailed _____

IV. COMPLIANCE INFORMATION

Person Serving Subpoena Paul J. Marbanie, DEA (Name and Agency)

Name of Security Employee Served Mary Ann Faulk

In Person _____ By Mail ✓ Date Received 11/24/78

Inclusive Dates of Records Furnished 10/20/78 - 11/21/78

Date Records Were Furnished or Date Mailed 12/7/78

To Whom Jim Sweat, DEA (Name and Agency)

By Who Mary Ann Faulk, Secy, Atlanta (Name) (Title) (Location)

Original Records _____ Copies ✓

V. SUBPOENAS SERVED ON COMMERCIAL

Commercial Employee Served _____ (Name) (Title) (District)

Date Subpoena Reviewed by Telephone _____ Reviewed by Who _____

VI. SUBPOENAS SERVED ON SECURITY

Commercial employee furnishing subscriber information Ms. McLaughlin, BOS

Telephone No. 422-5290 Date 11/28/78 District Marietta

VII. SUBSCRIBER INQUIRY

Date Inquiry Received _____ From Who _____

Address _____ Telephone No. _____

Certification Still in Effect Yes _____ No _____

Subscriber advised Orally _____ In Writing _____ Date _____

No Subpoena Attached, See File Captioned _____

20 Yr -

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
230 Houston Street, Suite 200
Atlanta, Georgia 30303

November 21, 1978

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attn: Glynn Martin

Re: GFG3-78-4012

Dear Glynn:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, it is requested that your company furnish as soon as possible subscriber and toll information on telephone numbers listed on the attached subpoena.

You are not to disclose the existence of this request for a period of ninety (90) days from the date of this request. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Jack Salter
Special Agent-in-Charge
Atlanta District Office

Attachment

DEA - 79
(July 1973)

U.S. DEPARTMENT OF JUSTICE/DRUG ENFORCEMENT ADMINISTRATION

SUBPENA

In the matter of the investigation of

GFCO-78-4012

TO: Southern Bell Telephone Company Security Office
Attn: Glynn Martin
AT: 7 Executive Park Dr., Atlanta, GA 30329

GREETING:

By the service of this subpena upon you by Special Agent Paul J. Marconni who is authorized to serve it, you are hereby commanded and required to appear before said Agent, an officer of the Drug Enforcement Administration to give testimony and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

Per previous discussions w/S/A Marconni

Subscriber Information: 992-3369; 952-8573; 973-8730; 424-6861; 427-0253; 943-4264; 938-7446; 288-6956; 252-3555

Telephone toll records for long distance telephone calls made from or billed to 404/952-8573, from 10/30/78 to date of this subpoena.

Place and time for appearance:

At Drug Enforcement Administration, 230 Houston St., Suite 200, Atlanta, GA 30303

Room 6th on the ____ day of ____, 19__,

at ____ o'clock ____ M.

Failure to comply with this subpena will render you liable to proceedings in the district court of the United States to enforce obedience to the requirements of this subpena, and to punish default or disobedience.

Issued under authority of Sec. 506 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law No. 91-513

ATTESTED COPY

Signature: _____

Issued This 21st day of November 1978 Title: Jack Salter, SAIC

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
230 Houston Street, Suite 200
Atlanta, Georgia 30303
February 23, 1979

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attn: Ms. Mary Ann Foulks

Re: Telephone Subscriber Information and tolls

Dear Ms. Foulks:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of 11/1/78, relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existance of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Jack Salter
Special Agent-in-Charge
Atlanta District Office

Telephone Numbers As Follows:

(404)	993-2351	373-0014
	325-2396	875-0761
	321-4851	952-8573
	876-4190	
	993-1591	

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
230 Houston Street, Suite 200
Atlanta, Georgia 30303
March 15, 1979

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attn: Ms. Mary Ann Foulks

Re: GFG3-78-4012

Dear Ms. Foulks:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of 11/21/78, relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existence of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Jack Salter
Special Agent-in-Charge
Atlanta District Office

/tc

Phone Numbers: (404) 952-8573

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
230 Houston Street, Suite 200
Atlanta, Georgia 30303

June 7, 1979

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attn: Ms. Mary Ann Foulks

Re: GFG3-78-4012

Dear Ms. Foulks:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of 11/21/78 relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existence of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Jack Salter
Special Agent-in-Charge
Atlanta District Office

Phone Number: (404) 952-8573

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
United Family Life Bldg.
230 Houston St., N.E.
Suite 200
Atlanta, Georgia 30303

September 1, 1979

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attn: Ms. Mary Ann Foulks

Re: GFG3-78-4012

Dear Ms. Foulks:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of 6/7/79 relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existence of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Raymond L. Vinsik
Special Agent In Charge
DEA, Atlanta District Office

/tc
Phone number: (404) 932-8573

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
United Family Life Bldg.
230 Houston St., N.E.
Suite 200
Atlanta, Georgia 30303
November 30, 1979

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attention Ms. Diane McCook Ms:

Dear Ms. McCook:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existence of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Raymond L. Vinsik
Special Agent In Charge
DEA, Atlanta District Office

/tc

Tolls on (404) 932-8573

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
United Family Life Bldg.
230 Houston St., N.E.
Suite 200
Atlanta, Georgia 30303
March 3, 1980

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attention Ms. Diane McCook Re: G7G3-78-4012

Dear Ms. McCook:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of 12/7/79 relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existence of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Raymond L. Vinsik
Special Agent In Charge
DEA, Atlanta District Office

/tc
Tolls which were requested on (404) 952-8573

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
United Family Life Bldg.
230 Houston St., N.E.
Suite 200
Atlanta, Georgia 30303
June 16, 1980

Southern Bell Telephone Company
Southern Bell Security Office
7 Executive Park Drive
Atlanta, Georgia 30329

Attention Ms. Diane McCook Re:

Dear Ms. McCook:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of 3/15/79 relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existance of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Raymond L. Vinsik
Special Agent In Charge
DEA, Atlanta District Office

/tc
Tolls requested on (404) 952-8573

FRANK Sacchinelli,
1302 (1-79)
1508 (1-79)
1460 (78)

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION
United Family Life Bldg.
230 Houston St., N.E.
Suite 200
Atlanta, Georgia 30303
August 4, 1980

Southern Bell Telephone Company
Security Office
136B, 125 Perimeter Center-West
Atlanta, Georgia 30346

Attention Ms. Diane McCook Re: GFCO-78-4012

Dear Ms. McCook:

Pursuant to an official criminal investigation of a suspected felony being conducted by the Drug Enforcement Administration, we received a reply from you to our letter of 11/21/78 relative to the telephone numbers listed below.

Inasmuch as this investigation continues, you are not to disclose the existence of this request for another ninety (90) days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Your cooperation is appreciated.

Sincerely,

Raymond L. Vinsik
Special Agent In Charge
DEA, Atlanta District Office

/tc

Tolls requested on (404) 952-8573 Frank Sacchinelli

THE STATE OF GEORGIA

VS.

IKE SMATHERS

IN THE SUPERIOR COURT
FOR THE COUNTY OF COBB
STATE OF GEORGIA

CASE NO. _____

TO SOUTHERN BELL
WHITLOCK AVENUE
MARIETTA, GEORGIA

That, laying all other business aside, you be and appear at the next Superior Court, to be held in and for said County in Courtroom A, 4TH Floor, Cobb Judicial Building, Marietta, Georgia on the 11TH day of JANUARY 19 79, at 3:00 o'clock P. M. and bring with you to produce in said Court the following: PURSUANT TO AN OFFICIAL INVESTIGATION BEING CONDUCTED BY THE COBB COUNTY POLICE DEPARTMENT, FOR A SUSPECTED FELONY, IT IS REQUESTED THAT YOUR COMPANY FURNISH SUBSCRIBER AND BILLING INFORMATION FOR THE PERIOD OF JUNE 1, 1978 THROUGH JANUARY 9, 1979 ON THE FOLLOWING TELEPHONE NUMBER: 952-8573. YOU ARE NOT TO DISCLOSE THE EXISTENCE OF THIS REQUEST FOR A PERIOD OF 90 DAYS FROM THE DATE OF THIS SUBPOENA. IN LIEU OF YOUR APPEARING IN COURT ON THE ABOVE DATE, THIS INFORMATION CAN BE FURNISHED TO AGENT BOB PIERCE OF THE COBB COUNTY POLICE DEPARTMENT, NARCOTICS DIVISION.

To be used in evidence by THE STATE

Herein Fail No Under the Penalty of the Law

Witness, the Honorable Howell C. Ravan, Luther C. Hames, Jr., and James L. Bullard, Judges of said Court.

Given under my hand and the official seal of this office, this 11TH day of JANUARY, 19 79.

155

Complied with:

DEPUTY CLERK, COBB SUPERIOR COURT
COBB JUDICIAL CIRCUIT

11-1-80

RECORD OF RELEASE OF TOLL INFORMATION

I. SUBSCRIBER INFORMATION

Listing Frank Sacchinelli Telephone No. 952-8523

Service Address 2845 Powers Ferry Rd S.E. Apt. 800-10 Marietta

Billing Name and Address (if different) _____

II. CERTIFICATION Yes ✓ No _____

III. SUBSCRIBER NOTIFICATION

Oral: Date Called _____ Contacted no (Yes - No) If no, reason _____

Letter: Date Mailed _____

IV. COMPLIANCE INFORMATION

Person Serving Subpoena Bob Pierce, Cobb County P.D. (Name and Agency)

Name of Security Employee Served Muriel Wilbanks

In Person _____ By Mail ✓ Date Received 11/15/79 atlanta security

Inclusive Dates of Records Furnished June 1 1978 - Dec 9 1978

Date Records Were Furnished or Date Mailed 1-11-79

To Whom Bob Pierce Cobb County P.D.

By Who Ava Staton (Name) BOS (Title) Marietta (Location)

Original Records _____ Copies ✓

V. SUBPOENAS SERVED ON COMMERCIAL

Commercial Employee Served Ava Staton BOS Marietta (Name) (Title) (District)

Date Subpoena Reviewed by Telephone 11-79 Reviewed by Who Muriel Wilbanks

VI. SUBPOENAS SERVED ON SECURITY

Commercial employee furnishing subscriber information _____

Telephone No. _____ Date _____ District _____

VII. SUBSCRIBER INQUIRY

Date Inquiry Received _____ From Who _____

Address _____ Telephone No. _____

Certification Still in Effect Yes ✓ No _____

Subscriber advised Orally _____ In Writing _____ Date _____

No Subpoena Attached, See File Captioned _____

20-77-1502-DEAD

L. E. EICHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 422-5430

April 10, 1979

Ms. Mary Ann Foulks
Southern Bell, Security Division
97 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. Foulks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we received toll record information for the telephone number 952-8573. At that time, we directed you not to disclose the existence of such request for a period of ninety (90) days.

Inasmuch as this investigation continues, we are hereby requesting you not to disclose the existence of this request for another ninety (90) days from the date of this letter. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Sincerely,

Karen L. Conner

Agent Karen L. Conner
Special Investigations Div.

KLC/ke

HIGHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 422-5428

June 26, 1979

Mrs. Mary Ann Foulks
Southern Bell Security
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Ga. 30329

Dear Mrs. Foulks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we requested toll record information on the telephone numbers on the attached page.

Inasmuch as this investigation continues, it is requested that the disclosure of these request be extended of another ninety days from the date of this letter. Any such disclosure could interfere with the enforcement of the law.

Sincerely,

Agt. K.L. Conner
Special Investigations Division

KLC/sm

PAGE TWO:

Telephone Numbers:

952-8573
237-9158
261-6350
394-3840
427-7168
445-4062
876-4421
892-9121
892-9144
233-9250
233-9187
434-6044
952-5257
873-2766
227-5151
948-4801
952-9338
973-1107
941-6413
934-7824
434-7824
428-5141
427-4128
427-7168
261-6350
445-4062
255-2311
255-0276
971-9146
953-0962
436-1440
436-7469
436-6817
428-9764
325-7876
428-7697
477-7699
455-9551
876-4421
242-562A
422-3975
422-3992
422-1635
432-8465
638-8045

K. E. HIGHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 422-3420

August 31, 1979

Mrs. Mary Ann Foulks
Southern Bell, Security Division
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Mrs. Foulks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we requested toll record information on the telephone numbers on the attached page. At that time, we directed you not to disclose the existence of this request for a period of ninety days. Inasmuch as this investigation continues, we are hereby requesting you not to disclose the existence of this request for another ninety days. Any such disclosure could impede this investigation and thereby interfere with the enforcement of the law.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Karen Connell

Agent Karen L. Connell
Special Investigations Div.

KLC/ke

795-5600
834-0061
881-6788
422-0745
427-7168
255-2329
952-3796
926-7234
973-7139
691-0274
252-5674
938-8619
422-0746
939-7852
876-5376
491-0736
478-6666
434-4922
977-2948
237-7977
973-1107
428-9764
422-3975
422-3992
971-9146
428-5141
427-7168
953-0962
941-6413
434-7824
427-4128
445-4062
952-5257
428-7697
394-3840
227-5151
876-4421
952-8573
948-4101
688-8045
436-7469
434-6817
432-8465
261-6350
873-2764
934-7824
477-7699
255-0274
255-2321

422-1635
427-7168
477-1323
876-4421
948-0452
428-2726
944-9125
832-2211
434-9004
261-9873
892-9121
892-9144

R. E. HIGHTOWER
Director

P. O. Box 649
Marietta, Georgia 30061
(404) 423-5420

November 1, 1979

Southern Bell Security
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Ms. Wilbanks,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Department, we requested toll record information for the telephone numbers on the attached page. At that time, we directed you not to disclose the existance of this request for a period of ninety (90) days.

Inasmuch as this investigation continues, you are hereby requested not to disclose the existence of this request for another ninety (90) days from the date of this letter. Any such disclosure could impede this investigation and thereby interfere with the enforcement of the law.

Sincerely,

Karen L. Conner

Agent Karen L. Conner, Analyst
Special Investigations Division

Page Two:

432-8665
881-8128
881-0833
949-6864
943-4254
325-7876
422-0745
483-6984
483-4823
266-1948
948-0452
428-2726
832-2211
944-9123
955-6757
351-5836
977-2948
992-0548
428-8742
351-8449
355-8397
656-8529 656-8513
658-1475
881-1102
885-1200
943-2226
872-0350
875-1781
875-4070
373-4678

If I have neglected any numbers due for re-certification, please do not notify the subjects; I will give you a letter.

Thank you.

Karen Conner

R. L. HIGHTOWER
Director

140 Page Street
Marietta, Georgia 30060
(404) 422-1439

February 1, 1980

Ms. Diane McCook
Southern Bell
#7 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. McCook,

Pursuant to a criminal investigation of a suspected felony being conducted by the Cobb County Police Department, toll record information was subpoenaed on the telephone numbers on the attached pages. At that time, we directed you not to disclose the existence of this request for a period of ninety days.

Inasmuch as this investigation continues, it is requested that this information not be disclosed for another ninety days from the date of this letter.

Any disclosure could impede this investigation and therefore interfere with the enforcement of the law.

Sincerely,

Karen L. Conner

Agt. Karen L. Conner
Special Investigations Div.

351- 8[illegible]0
773- 7155
[illegible]21- 8127
[illegible]31- 0732
[illegible]27- 5571
237- 9779
926- 7234
453-1242
261- 6350
421- 9782
941- 6413
351-6219
394- 5140
477-1323
423- 7168
423- 5512
753- 6363
351- 5936
255- 9329
972- 2147
738- 7852
944- 5123
932- 2911
948- 6452
[illegible]- 137
477- 9677
[illegible]31- 1635
6[illegible]6- 6529
[illegible]24- [illegible]127
[illegible]72- [illegible]376
2[illegible]2- 1945
[illegible]- [illegible]

943- [illegible]
952- [illegible]
255- [illegible]
855- 2311
[illegible]- [illegible]
6[illegible]- [illegible]
943- [illegible]
691- [illegible]
953- 1512
[illegible]31- 1102
[illegible]- [illegible]
325- 7852
973- 0548
421- 7697
971- 6[illegible]
[illegible]- [illegible]
423- 4128
971- 9146
427- 7168
946- [illegible]
972- 1107
978- [illegible]
935- [illegible]
423- 3975
432- [illegible]
436- [illegible]
426- [illegible]
638- 1475
427- 7158
433- [illegible]
[illegible]- [illegible]
515- [illegible]

422- 1614
943- 4264
428- 7697
445- 4062
432- 9245
952- 5674
428- 7764
445- 4062
675- 1781
413- 6914
373- 4678
943- 2226
421- 7697
418- 4922
229- 5151
435- 2754
314- 3940
432- 8665
491- 0736
176- 4421
261- 6250
521- 1664
423- 1937
427- 7168
576- 4124
434- 4632
429- 4151
992- 1490
488- 3645
948- 4101
952- 1272

572- 3253
478- 3667
937- 8019
941- 9217
355- 1377
432- [illegible]
961- [illegible]

R. E. HIGHTOWER
Director

148 Page Street
Marietta, Georgia 30060
(404) 422-1428

May 1, 1980

Ms. Diane McCook
Southern Bell
675 Executive Park Dr. N.E.
Room 320
Atlanta, Georgia 30329

Dear Ms. McCook,

Pursuant to an official criminal investigation of a suspected felony being conducted by the Cobb County Police Dept., we requested toll record information on the telephone numbers on the attached page. At that time, we directed you not to disclose the existence of this request for a period of ninety days.

In as much as this investigation continues, we are hereby requesting that you do not disclose the existence of this request for another ninety dyas. Any such disclosure could impede this investigation and thereby interfere with the enforcement of the law.

Thank you for your cooperation in this matter.

Sincerely,

Karen Conner

Agent Karen L. Conner
Special Investigations Division

May 1, 1930

876-4421	873-2766	656-8513
452-1343	939-7857	373-7139
351-6219	825-7876	952-5257
943-2226	261-6350	891-1102
432-8665	423-8743	691-0274
491-0736	456-8529	971-6096
429-5151	261-6350	432-9349
875-1781	876-5376	881-3128
394-3840	422-1635	781-0333
252-5674	331-1664	445-4062
394-3840	355-6376	824-7234
434-8365	255-2211	427-4139
429-5572	944-7123	477-1323
487-6571	435-2754	941-9217
351-3449	434-4922	266-1948
355-8397	938-8619	948-0452
428-7697	872-0350	351-5736
483-4825	473-2666	977-2948
992-0348	436-7469	255-2329
992-1454	436-6817	237-9997
433-1938	943-4501	941-6413
876-4421	655-5245	953-0363
428-7697	952-8573	434-7624
448-	934-7834	335-1826
332-2241	477-7699	949-4151
943-4364	432-5465	971-9146
943-4364	373-4678	998-1872
934-7824	658-1475	955-6757

427-7168
949-6364
427-7168
422-6745
431-5141
427-7168
433-3995
442-3992
422-1614
421-9764
483-6984
973-1107
432-2732
971-5755
971-5756
971-1762
971-3189
971-4131
436-4425
432-3614
421-2066
955-5614
321-3069
636-3060
941-9471
948-5647
974-9062

944-8827
972-1571
955-5962
973-6575
424-1973
436-4775
435-3543
432-4721
743-4643
431-8792
434-4617
425-7766

R. K. HIGHTOWER
Director

140 Page Street
Marietta, Georgia 30060
(404) 422-1420

AUGUST 1, 1980

Southern Bell Security
125 Perimeter Center West
Room 136
Atlanta, GA 30346

Dear Ms. Foulks,

Pursuant to a criminal investigation of a suspected felony being conducted by the Cobb County Police Deaprtment, toll record information was subpoenaed on the telephone numbers on the attached page. At this time, we directed you not to disclose the existence of this request for a period of ninety days.

Inasmuch as this investigation continues, it is requested that this information not be disclosed for another ninety days from the date of this letter.

Any such disclosure could impede this investigation and therefore interfere with the enforcement of the law.

Sincerely,

Lynn Moore

Lynn Moore
Special Investigations Div.

NUMBERS TO RE-CERTIFY **AUGUST 1, 1980**

973-1107
483-6984
422-1614
428-9764
974-9003
422-3975
422-3992
434-8687
953-5614
971-3199
432-3614
955-6757
971-1762
424-1993
971-3755
971-3756
998-1272
321-3069
971-9146
428-5141
427-7168
422-0745
949-6864
885-1220
428-2066
941-6413
237-9799
434-7824
953-0263
949-4151
422-7155
436-4025
255-2329
977-2948
351-3936
948-0452
266-1948
636-3069
941-9217
477-1323
432-4721
427-4128
926-7234
455-4062
435-3543
881-8128
881-0833
973-7139
881-1102
952-5257
955-5962
691-0274
971-4096
432-9349
944-8827
858-1473
656-8513
373-4678
483-[illegible]3
428-7697
351-8449
355-8397
973-6579
973-1598
943-4643
427-5572
427-5571
436-6775
434-8365
748-5647
955-0106
394-3840
252-2674
875-1781
227-5151
948-9471
432-8665
491-0736
943-2226
971-4131
351-6217
452-1343
876-4421
432-2732
433-1938
992-0548
992-1440
943-4264
952-8573
435-2754
948-4801
688-8045
436-7469
436-6817
478-6666
872-0350
432-8465
938-8619
434-4922
261-6350
325-7876
428-8742
939-7852
873-2764
428-8766
477-7699
934-7824
832-2211
944-9123
255-0276
255-2311
876-5376
422-1635
231-1664
656-8529

27 September		Sgt. D. Wilson	2

ECT(S) Frank Sacchinelli,Steve Musick, Sam Musick Susan McBride and other

TION ro Atlanta,New York, Florida, Santa Marta Colombia | ACTIVITY Narcotics Smug

RMATION SOURCE Northwest Answering Service 233 Cresent Dr. Marietta Georgia

R AGENTS Capt. J.D.Maxwell,Sgt. R.A.Tucker , Agent C.W.Wilson

SIS:

On 27 September 1979 A subpeona was served to Sharron Bryan Mgr. of the Northwest Answering Service requesting the records that they had reguarding three(3) subjects, Danny Benson (Danny Benson Aircraft Sales), Steve Musick and Frank Sacchinelli.

These Records,in the form of messages taken by the line operators, show that the aforenamed subjects are making frequent trips between Atlanta, Florida and New York. That these subjects use both commercial and private air services as their mode of travel. That these subjects keep in touch on a day after day bases.That these subjects are in contact with subjects in other countries that are noted for smuggling narcotics. They have established a pattern similar to other known smuggling orginizations.

AILS:

DATE	NAME OF CALLER	NUMBER OF TIMES CALLED	MESSAGE
July 25	William	1	Called
July 25	Susan	1	682-7881 Room 306
July 25	Willy	2	767-0281 Ext.170
Julu 26	William	1	Called
July 26	Mary	2	Called
July 27	Susan	2	952-9451 Room 2028
July 27	Sam	1	739-4000 Ext.525
July 27	Susan	1	At Journey's End
July 27	Jim	2	#4506
July 27	Tom	1	904-785-0561 Room 166
July 28	Susan	2	in room 525
July 28	Susan	2	At Sammies
July 28	Steve	2	At home in New York
July 28	Susan	1	is with Sammy
July 29	Steve	2	Arriving at airport Eastern #443 at 11:15 from Laquard
July 29	Unk	2	Susan&Smokey leaving about 2:30
July 29	Steve	2	Call me in New York

DISTRIBUTION	SIGNATURE OF AGENT	DATE 27-0
	APPROVED [redacted]	DATE

CONFIDENTIAL

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17

DATE/TIME	REPORTING AGENT	FILE NUMBER
27 September 79	D.J.SISSON	2

T(S)
Same

TION
Same

ACTIVITY
Same

RVATION SOURCE
Same

AGENTS
Same

SIS:

DATE	NAME OF CALLER	NUMBER OF TIMES CALLED	MESSAGES
July 29	Steve	2	Arriving at airport Eastern #443 at 11:15 from Laquardia
July 29	Susan	2	IF I don't hear from you I'l have to drive
July 30	Debbie	1	At home
July 30	Susan	2	351-6500 Ext.343
July 30	Steve	1	I'm in Atlanta please leave contact number
July 30	Sam	2	In office a couple Hours
July 30	Mary	2	216-333-6200 Ext.353
			Call back operator 561
July 31	Jim	2	952-9451 Room 2013
July 31	Rick	2	(ASAP) Need SAMPLE
July 31	Mark	1	Called
July 31	Susan	1	351-6500 Ext.343 (ASAP)
July 31	Susan	2	963-9143
July 31	Bob	1	At mothers 314-868-0188
July 31	Terry P.	1	At 887#
July 31	Mark	1	At Brothers
July 31	Hazel	2	901-452-7677

NO CALLS OR MESSAGES FOR FRANK FOR THE MONTH OF AUGUST CALLS CAME IN FOR FRANK ON STEVE MUSICK'S NUMBER

Sept.04	Steve	2	At home call this evening
Sept.05	Steve	2	212-245-3775 Call after 12n
Sept.06	Mary	2	Trip cancelled visiting w/T
Sept.06	Tim	2	Called
Sept.07	Cousin Bob	2	Will try to reach you over week-end
Sept.07	Tim	2	Call on Beeper or at home
Sept.07	Rick	2	615-637-1234 Room1001
Sept.09	Steve	2	Back in town call at home or when you get a chance

DISTRIBUTION	SIGNATURE OF AGENT	DATE
	APPROVED	DATE

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DATE/TIME	REPORTING AGENT	FILE NUMBER
27 September79	D.J.SISSOM	2

CT(S) Same

TION Same | ACTIVITY Same

DATION SOURCE Same

R AGENTS Same

SIS:

DATE	NAME OF CALLER	NUMBER OF TIMES CALLED	MESSAGES
Sept.10	Steve	2	At business Number 6PM N.Y.
Sept.10	Steve	1	Call Adair 881-9814 Ref. final $36,000 take it by th Resturant
Sept.10	Steve	1	At home (ASAP)
Sept.10	Steve	1	At home
Sept.11	Steve	2	974-0906 after3PM
Sept.11	Mr. Peachtree	2	At home
Sept.11	Steve	2	Before 4:30 at office
Sept.11	T.R.	2	on beeper
Sept.13	Sam	1	Called again
Sept.13	Steve	1	At office 212-974-0906
Sept.13	Sam	1	305-462-5555 Ext. 1009
Sept.14	Sam	1	305-462-5555 Ext. 1009
Sept.14	Bob G from Missouri	2	918-446-5661
Sept.14	Susan	2	Your parents are Here
Sept.16	Susan	2	767-0281
Sept.17	Sam	2	Hodge Field Airport Hanger(at 8:45 if any problems cal George in Chicago
Sept.17	Sam	2	Wait for me at Hanger(1) running late
Sept.20	Rick	2	301-972-8234
Sept.20	Susan	1	Left for Kansas City at 9:3 will call later today.
Sept.20	Susan	2	816-737-0200 About 2:00 Or 2:30 Ext.1019

DISTRIBUTION	SIGNATURE OF AGENT	DATE
	APPROVED	DATE

CONFIDENTIAL

"This information is furnished for law enforcement use only and no other review. It is to be considered privileged and confidential and the contents shall not be disclosed to any persons organization or used for any purpose other than that of a duly authorized law enforcement official without the permission

19

RT DATE/TIME	REPORTING AGENT	FILE NUMBER
October 11, 1979	Sgt. D. J. Sisson	2

JECT(S)
Frank Sacchinelli, Steve Musick, Sam Musick, Susan McBride and others

ATION	ACTIVITY
Metro Atlanta, New York, Florida, Santa Marta, Colombia	Narcotics smuggli

ORMATION SOURCE
Northwest Answering Service, 233 Cresent Dr., Marietta, Ga.

ER AGENTS
Capt. J. D. Maxwell, Sgt. R. A. Tucker, Agt. C. W. Wilson

ORS:S:

On September 27, 1979, a subpoena was served to Sharron Bryan, Manager of the Northwest Answering Service, requesting the records that they had regarding three (3) subjects, Danny Benson, (Danny Benson Aircraft Sales), Steve Musick, and Frank Sacchinelli.

The following messages are in date sequence:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
* Steve Musick, 71 West 75th Street, New York, N.Y. 10023:			
June 30	Michael	2	in N.Y., 212-989-0186
July 1	O.G.	2	left Fla. at 11:15
July 1	O.G.	2	305/584-4000, ext. 140
July 1	Papalios	2	From London, England 373-7370 - Please call anytim
July 1	Bear	2	952-5993
July 2	John	2	Fly or come to Daytona
July 2	Bear	2	803-288-9999 or 803-654-3649
July 2	Margo	2	called
July 2	Buddy or Gene	1	305/523-9624 Red Aircraft
July 2	Rick	1	called
July 2	Rick	1	609-692-1591
July 3	Rick	1	609-692-1591

DISTRIBUTION	SIGNATURE OF AGENT	DATE
	APPROVED [redacted]	DATE

CONFIDENTIAL

"This information is furnished for law enforcement use only and no other person. It is to be considered privileged and confidential and the contents shall not be disclosed to any person or organization or used for any purpose other than that of a duly authorized law enforcement official unless in judicial proceedings."

DATE/TIME	REPORTING AGENT	FILE NUMBER
October 11, 1979	D. J. Sisson	?

CT(S)
same

TION
same

ACTIVITY

MATION SOURCE
same

T AGENTS
same

SIS:

DATE:	NAME OF CALLER :	NUMBER OF TIMES CALLED:	MESSAGE :
July 3	Steve	1	Frank call me at Holiday Inn Downtown West Palm Beach, room 416
July 4	Bear	1	952-5993
July 4	Bear	1	after 2:30 231-9239
July 4	Willie	1	305-689-6100 room 418
July 5	Steve	1	305-655-8800 ext 416 ASAP
July 5	Sue	2	Sue needs to talk with Case, will call at 3:00 and 4:00
July 5	Bill	1	Will have lunch with Al at 2:00
July 5	Adair	1	in P.M.-evening, after 6p 881-9814
July 6	Monty	1	at his mom's after 4 or 5 to be picked up there
July 6	Frank	1	with Susan at 1602
July 6	unknown	1	call Loft & leave message about when you are going to be in
July 6	Steve	1	305-655-8800 W.Palm ext.4 you car is in shop being fixed.

DISTRIBUTION	SIGNATURE OF AGENT	DATE
	APPROVED	

CONFIDENTIAL

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21

INVESTIGATIVE REPORT

PORT DATE/TIME Oct. 11, 1979	REPORTING AGENT D. J. Sisson	FILE NUMBER 2
BJECT(S) same		
CATION same		ACTIVITY
FORMATION SOURCE same		
HER AGENTS same		

SYNOPSIS:

DATE:	NAME OF CALLER	NUMBER OF TIMES CALLED:	MESSAGE:
July 6	Jim	2	at airport
July 6	Steve	2	if Monty calls take airpo bus to No[illegible]ide Terminal and then call after 5 they will arrange for you
July 6	Bear	2	447-8400/ 952-5993 very important.P.O.Box 57 Rex,Ga.,30573 Margo Hill
July 6	Ken	2	Lloyd Baker, 919-383-2678
July 6	Monty	2	arriving Braniff Flt.261 11:00 a.m.
July 6	Monty	2	Won't be able to make it
July 6	Laura	1	leave your arrival time Adair is at Tyron's if you want to call before you leave
July 7	Laura	1	(same as above)
July 7	Monty	1	at your Mom's in Kansas, City, call before 4 9a.m. Saturday
July 7	Craig	2	At home - very important
July 7	Frank	2	432-9349
July 7	Tim	2	Room 1007

DISTRIBUTION	SIGNATURE OF AGENT	DATE
	APPROVED [redacted]	DATE

CONFIDENTIAL

"This information is furnished for law enforcement use only and no other person. It is to be considered privileged and confidential and the contents shall not be disclosed to any person or organization or used for any purpose other than that of a duly authorized law enforcement official acting in their official capacity."

22

INVESTIGATIVE REPORT

PORT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

BJECT(S)
same

CATION
same

ACTIVITY

FORMATION SOURCE
same

HER AGENTS
same

SYNOPSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED :	MESSAGE:
July 7	Margo	1	899-1009 call her late tonight up North around 1 PM today
July 8	Rick	2	305-595-6346
July 9	Carl	2	912-964-1421, ext. 104
July 9	Unknown	1	Susan or Daniel in N.Y. 212-242-3023
July 9	Karl	1	call 404-952-7581 ext. 424
July 9	Rick	1	301-486-5600 ext 135
July 9	Susan or Daniel	1	in N.Y.212-242-3023
July 9	Steve	1	Steve very upset with other ha of this thing call him at Journey's Inn
July 10	Karl	2	will stay in room as long as possible
July 10	Rick	1	609-692-1591
July 10	Jim	2	952-9451 ext. 1007
July 10	Woody & Jim	1	At Journey's Inn, room 1007
July 10	Bud Costonza	1	212-239-1151
July 11	Bud Costonza	1	212-239-1151
July 11	Steve	1	moved to Holiday Inn,Rm. 531

DISTRIBUTION

SIGNATURE OF AGENT — DATE

APPROVED — DATE

CONFIDENTIAL

"This information is furnished for law enforcement use only and no other reason. It is to be considered privileged and confidential and the contents shall not be disclosed to any person or organization or used for any purpose other than that of a duly authorized law enforcement official acting in their official capacity."

23

REPORT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

SUBJECT(S)
same

LOCATION
same

ACTIVITY

INFORMATION SOURCE
same

OTHER AGENTS
same

SYNOPSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
July 11	Jim for Frank	2	968-1367
July 11	Margo	1	325-5995 & 899-1009 page #
July 12	Jim	1	urgent
July 12	Jim	1	615-442-4506
July 12	Keith	1	from Sundown
July 12	Genya	1	245-3775
July 12	Bear for Frank	2	231-9190
July 12	Sam for Frank	1	in Ft. Lauderdale
July 13	Sam fo Frank	1	in Ft. Lauderdale
July 13	Jim for Frank	1	at airport
July 13	Sam for Frank	2	Poppeno, Fla. # unk.
July 13	Carl	1	on page 608-252-0124 will be constantly awaiting reply
July 14	William	1	called # unk.
July 15	Sue	1	called # unk.
July 15	William	1	called
July 15	Dennis	2	called is at work
July 16	Woody for Frank	2	in Atlanta # unk.

DISTRIBUTION	SIGNATURE OF AGENT	DATE
	APPROVED [redacted]	DATE

CONFIDENTIAL

"This information is furnished for law enforcement use only and no other person. It is to be considered privileged and confidential and the contents shall not be disclosed to any person or organization or used for any purpose other than that of a duly authorized law enforcement official acting in their official capacity."

REPORT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	?

SUBJECT(S)
same

LOCATION
same

ACTIVITY

INFORMATION SOURCE
same

OTHER AGENTS
same

SYNOPSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
July 16	Bear for Frank	1	call before 5:00 231-9190
July 16	Craig for Frank	1	at home between 4:00 - 5:00
July 16	Dennis for Frank	1	at home number
July 17	Bear for Frank	1	231-9190 or 952-5993 urgent
July 18	Bear for Frank	1	231-9190 or 952-5993
July 19	Carl	1	404-761-5201 ext. 414
July 19	Margo	1	325-5995 or 899-1009 page
July 19	Dennis for Frank	1	at home number
July 19	Bear for Frank	1	952-5993 or 447-8400
July 19	Sam Musick	1	303-249-4094 ASAP
July 20	Sam Musick	1	303-249-4094 ASAP
July 20	Virgel	1	237-4107
July 20	Jim	2	call at 4506
July 20	Sam for Frank	1	got your girlfriend with you call at his girls house
July 20	Bear for Frank	2	didn't leave keys to Olds 952-5993
July 20	Musick Const. Co.	1	Be at Lake Dowell on Sept. 6, 89 at Halls Crossing
July 20	Katie	1	Laura application cancelled

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	APPROVED	DATE

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RT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	7

ECT(S)
Same

JTION	ACTIVITY
Same	

RMATION SOURCE
Same

R AGENTS
Same

RSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED	MESSAGE:
July 21	Craig	2	got your message and will see you sometime Sunday if you need him
July 21	Bear for Frank	1	forgot to leave your car at gas station
July 22	Carl	1	761-5201 ASAP ext. 414, waiting for you
July 22	Steve for Frank	1	call at house in New York
July 23	Julio	1	305-854-3792
July 23	Adair	2	881-9814 restaurant. most of d 872-1973
July 23	Woody	2	in Atlanta, very important
July 23	Pete	2	305-592-1006
July 23	Laura	2	212-431-6128
July 23		1	call Jim in Tenn. Steve in N.Y.
July 23	Steve for Susan	1	McCollum Airport going to the Hotel will meet you there room 2078
July 24	Steve for Susan	1	(same as above)
July 24	Margo	2	call her on pager again she didn't get number
July 24	Sam for Frank	2	out West 714-499-5104

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	APPROVED [redacted]	DATE

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RT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	

JECT(S)
same

TION
same

ACTIVITY

RMATION SOURCE
same

R AGENTS
same

SIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
July 24	Mr. McCarty for Ken	2	294-6565
July 24	Michael	2	212-966-4313
July 24	Margo	1	at home
July 24	for Frank	1	call your mother
July 25	for Frank	1	call your mother
July 25	Margo	1	at home
July 25	Sam	1	312-266-6193
July 25	Laura	2	212-732-6782
July 25	Craig	1	313-349-1003 leaving 7 PM to-morrow night for Detroit he will be at above number th
July 25	Craig	1	(same as above)
July 26	Jim	2	in Tenn.
July 26	Monty & Sam	1	call ASAP 249-4094 after 5:30
July 26	Katie	1	you know number
July 26	Frank	2	called number unknown
July 27	Frank	1	404-767-0281 rm. 242
July 27	Steve's father	1	call your father either at ho or office
July 27	Katie	1	you know the number.

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	APPROVED [redacted]	DATE

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T DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

ECT(S)
Same

TION
Same

ACTIVITY

RMATION SOURCE
Same

R AGENTS
Same

ESIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
July 27	Frank	1	just got home will see Tom tonight
July 27	Mrs. Blair	1	816-471-1799 please call colle
July 28	Frank	2	767-0281 room 242
July 28	Woody for Frank	1	at home, also leave a number where he can call you
July 28	Ann Ford for Debbie Musick	1	please return call Sat. she will be there all day 422-4896
July 29	Woody	1	at home also leave a number where he can call you
July 29	Margo	2	Thank you for leaving the address book she did receive i
July 29	Laura	1	212-431-6128
July 29	Laura	1	212-431-6128
July 30	Margo	1	at home until 10 then at club
July 30	Margo	1	you know number
July 30	D.L.	1	will be in Atlanta at 4:30 @ Radison, John will be there later on tonight
July 30	Jimmy Lee	1	404-394-5000 ext. 235
July 30	John	1	at your apt. in New York
July 30	Jimmy Lee	2	call Jimmy Lee again, call John 212-446-4800 rm 210

DISTRIBUTION	SIGNATURE OF AGENT	DATE
	APPROVED [redacted]	DATE

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RT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	?

JECT(S)
same

CTION
same

ACTIVITY

RMATION SOURCE
same

R AGENTS
same

BASIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
July 30	Sam	2	Please call Sammet office out West in your area Tues.
July 30	Margo	2	what happened to you
July 30	John	1	at your apt. in N.Y.
July 31	Frank	2	Flying to Fla. with Sammie tonight, and will be seeing Michael
July 31	laura	2	732-6782
July 31	Terry for Frank	1	at 887 #
July 31	Mrs. Blair	2	816-471-1799 Kansas City, Mo.
July 31	Laura	1	Please clal
July 31	Ann	1	Adair Johnson called didn't get to talk to her, can't reach her
August Calls			
Aug.1	Ann	2	872-1972
Aug.1	Margo	2	at West Palm
Aug.1	Margo	2	at West Palm airport payphone 305-683-9895
Aug.1	Margo	2	305-586-9511
Aug.1	Margo	1	at home, got key from Landlady call, ring twice and call back PL/C Ron ask him to call her

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	APPROVED [redacted]	DATE

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DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

(S)
same

ACTIVITY
same

TION SOURCE
same

GENTS
same

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
Aug. 1	Chuck	1	305-764-2233 Room 418 Bahia Mar
Aug. 2	Chuck	1	(same as above)
Aug. 2	Margo	1	called
Aug. 2	Adair	1	Ann Ford and we are meeting Mom at 12:00 at Tyrone's Restaurant
Aug. 3	Margo	1	called
Aug. 3	Susan	1	must talk to you about O.G. If she's out please leave a number where she can reach you.
Aug. 4	Susan	1	going to buy ceiling fan, has errand, will be back in 2 hrs.
Aug. 4	Adair	2	meeting scheduled for Monday at 12 noon at the restaurant
Aug. 5	Frank	2	in Atlanta. Meeting Willie at airport, couldn't work anything out with Mike
Aug. 6	Craig	1	called
Aug. 6	Fran	1	is going to Germany tomorrow, around 7 pm, please call her tonight 904-932-9481
Aug. 6	Frank	1	at home

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30

MT DATE/TIME: Oct. 11, 1979	REPORTING AGENT: D. J. Sisson	FILE NUMBER: ?
JECT(S): Same		
ATION: Same		ACTIVITY:
ORMATION SOURCE: Same		
ER AGENTS: Same		

OBSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
Aug. 6	Rick Hannix	2	615-361-5900 extn 908
Aug. 8	Sam	1	714-499-5104
Aug. 8	Katie	1	called
Aug. 8	Danny Benson	1	trying to reach you, will cal answering serv. at 10:30 p.m. PL/ leave a # where he can call you
Aug. 8	Frank	1	at Holiday Inn @ 441 & Comme 305-739-4000 room 221
Aug. 8	note from Ans. Serv, Danny will be calling collect thru Eve person to person fo Steve. Have Steve to leave a # and we will give the # to the operator Ft. Lauderdale.		
Aug. 9	Sam	1	714-499-5104 till Thurs. Ft. Lauderdale then
Aug. 9	Steve for Danny	2	212-732-6765 please call Ba. Fri.
Aug. 9	Katie	1	233-0263
Aug. 10	Ann	2	she has Pam's personal effec please have Frank call her.
Aug. 11	Steve	1	in New York at his home.
Aug. 11	Jim	2	in Tenn. at the airport # un
Aug. 12	Sam	2	312-581-0500 ext. 239
Aug. 13	Karen Lawson	2	952-9900

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DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	

ECT(S)
same

TION
same

ACTIVITY

RMATION SOURCE
same

K AGENTS
same

ESSES:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED	MESSAGE:
Aug. 14	Mr. Singer for Ken	2	294-6566
Aug. 15	Margo	2	325-5995
Aug. 16	Monty	1	249-7525 call about 11pm Colorado time
Aug. 17	J.C.	1	is in transient please leave a # where he can reach you at.
Aug. 17	Laura	1	she dosen't have Debbie's number please leave it with ans. serv. and she'll call back later on to get it.
Aug. 17	Jim	2	in Tenn. # unk.
Aug. 17	Frank	1	at home
Aug. 17	Sam	1	at Ft. Lauderdale 739-4000 rm
Aug. 17	Checco	2	212-431-6624 N.Y. Urgent
Aug. 17	Steve	2	J.C. or Guy call me at 404-952-9451 room 1053
Aug. 17	Frank	1	at home important
Aug. 17	Michael	2	ASAP 212-966-4313
Aug. 18	Laura	2	New Port, Rhode Island, 846-88 pay phone, will try to be ther at 6:pm. If she dosen't get you, leave a # where she can. When will you be back in N.Y.

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RT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

ECT(S)
same

TION
same

ACTIVITY

RMATION SOURCE
same

R AGENTS
same

RSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
Aug. 18	Steve	2	at Sheraton Downtown at 12:30
Aug. 18	Sam Sachinelli	1	714-494-3310
Aug. 18	Tyron's Rest.	2	881-9814.
Aug. 18	Margo	1	at home # unk.
Aug. 18	Chasitity	1	634-8825 till 10 PM or after 1
Aug. 18	Frankie	1	is with Susan ypu know #
Aug. 18	Sam	1	714-499-5104
Aug. 18	Steve	1	at home at midnight or 12:30
Aug. 19	Laura	1	called from Newark Airport can't find you; going to 15th street
Aug. 19	Frank	1	at home # unk.
Aug. 19	Jimmy Lee	2	904-788-1368
Aug 20	Craig	1	you know number
Aug. 20	Jimmy Lee	1	904-788-1368
Aug. 21	Craig	1	you know number.
Aug. 21	Frank	1	952-9451 room 2020 impt. emer
Aug. 21	Frank	1	can be reached at home at 6:3 Susan in Fla. after 6pm pleas call one of them.
Aug. 21	Frank	1	at home,let ring 3 times and

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RT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	?

ECT(S)
same

TION
same

ACTIVITY

RMATION SOURCE
same

R AGENTS
same

IPSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
Aug. 21	Frank	1	at home - urgent
Aug. 21	Sam	1	is still waiting to hear from you out west, please call
Aug. 21	Ann	1	404-422-4896 be home tonight and After 9:30 tomorrow pm
Aug. 22	Andy Cardwell	1	952-1078
Aug. 22	Sam	1	714-499-5104
Aug. 22	Jimmy Lee	1	904-788-1368
Aug. 23	Sam	1	714-499-5104
Aug. 25	Frank	2	will meet w/ Gerogge down at t airport the plane is still being worked on
Aug. 24	Monty & Sam	2	at office at 8 a.m. (between 8 and 9 am) 434-5612 Colorado home
Aug. 25	Laura	2	Steve missed 1:00 flight - Te ing at 3 am. tomorrow (Sat.) he's at home Shop this am, back home about am
Aug. 25	Rich	1	615-361-7666 ext. 344
Aug. 26	James Dawkins	2	at Dan River Carpet 1-382-56 566
Aug. 27	Marto	2	325-5995

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RT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

ECT(S)
same

TION
same

ACTIVITY

RMATION SOURCE
same

R AGENTS
same

RSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED:	MESSAGE:
Aug. 29	Sam	2	back in his room
Aug. 30	Frank	1	will be out for a few hrs - call after 10 am
Aug. 31	Don Ambrose	2	212-436-9711 - urgent you know number
	Call for September		
Sept. 1	Sue	1	993-7762
Sept. 4	Monte	1	Lenard had to cancel out call the Doc, mom is chomping down
Sept. 5	Frank	1	called, welcome home wil be at the machine
Sept. 5	Monty	2	303-249-7525
Sept. 7	Rick	2	615-637-1234 room 1001
Sept. 8	Steve	1	put your phone on the book
Sept. 10	Steve's father	2	call father at home tonight after 8 pm Colorado time
Sept. 10	Frank	1	said 9061 Yankee is ready
Sept. 11	Frank	1	said 9061 Yankee is ready
Sept. 12	Sam	1	you know #, needs to talk w/yc
Sept. 13	Steve's father	2	Please call father ASAP at off

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RY DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

ECT(S)
same

TION
same

ACTIVITY

RMATION SOURCE
same

ER AGENTS
same

ORSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED	MESSAGE:
Sept. 14	Bob G.	2	from Missouri 816-446-5661
Sept. 14	Steve	2	from Kanas City trying to reach you would like to see you Tuesday
Sept. 15	Peter	2	305-446-7468 call tomorrow at 12:00 (called collect) emergency
Sept. 15	Mr. Hosa Samlirm	2	501-4427 Santa Marta, Colombia
Sept. 15	Ray	2	from New York-he is home
Sept. 16	Peter		305-446-7468
Sept. 16	Debbie & Craig	1	in West Palm Beach see at part tonight all limbs are intact
Sept. 16	Terry	1	call at 923
Sept. 17	Steve	2	in Kansas City ASAP
Sept. 18	Craig	2	Call Craig or call maid at home
Sept. 18	Steve for Susan	2	Steve Musick will arrive Delt Flt. # 209 arriving 11:44 am
Sept. 18	Susan	2	Called, Colorado is squared a
Sept. 19	Rick	2	301-972-8234
Sept. 19	Steve in K.C.	1	call at 10pm Kansas City time
Sept. 19	Andy Cardwell for Danny Benson (1)		952-1078

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30

RT DATE/TIME	REPORTING AGENT	FILE NUMBER
Oct. 11, 1979	D. J. Sisson	2

ECT(S)
same

TION
same

ACTIVITY

RMATION SOURCE
same

R AGENTS
same

RSIS:

DATE:	NAME OF CALLER:	NUMBER OF TIMES CALLED	MESSAGE:
Sept. 24	Peter	2	305-446-7468Mon. at 7 pm very important
Sept. 25	Margo	2	you know number
Sept. 26	Frank	1	has been receiving calls at you home can't reach you
Sept. 26	Genya	1	Salary for 4 musicians are due Friday & Salary for Sec.
Sept. 26	Darrie	2	we need money for musicians by Fri.

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DATE	PROCEEDINGS	
6	MESSINA:	Notice of document returned-(Motion to adopt). (Bruce Wagner, Esq.). 85
6	SARCINELLI: & MESSINA	ORDER: Magistrate's recommendation approved & adopted as order of court & all physical evidence, all statements made by defts to any agts., informant or any person acting on their behalf & all electronic recordings or tape recordings previously ordered produced & not produced are suppressed as evidence. (2/6/80-JAG)M-2/20/80. 86
13	MESSINA:	Motion to adopt the motion to strike Govt's untimely motion to deny or reject Magistrate's Recommendation to dismiss indictment filed by deft Sarcinelli. 87
14	MESSINA:	Motion for clarification of order on motion to suppress & or dismiss. 88
19	MESSINA:	Motion to supplement record. 89
25	SARCINELLI: & MESSINA	ORDER: Sarcinelli's motion to strike DENIED as moot. Messina's motion to adopt motion to strike DENIED AS MOOT. Messina's motion to supplement record GRANTED & record in cause be supplemented w/material that was ordered suppressed by Court on 2/6/80. Messina;s motion for clarification GRANTED. Court's order of 2/6/80, the court expressly chose to approve & adopt Magistrate's Recommendation as to suppression of evidence. The court did not indicate indictment should be dismissed. (2/25/80-JAG)M-3/26/80. 90
19	GOV'T.:	NOTICE OF APPEAL filed by USA to US Court of Appeals for the Fifth Circuit from Order entered 2/6/80 granting Defts. Sarcinelli and Messina Motion to suppress evidence and suppressing physical evidence, statements and electronic and tape recordings. Copy mld. to: USCA; Charles Farrar, Esq., Bruce Wagner, Esq.; Probation and Court Reporter. 91
19	GOV'T.:	Certificate Pursuant To Title 18 USC 3731 92
26	PICCARELLO:	Notice of Appearance of DANIEL B. BASS, ESQ. as attorney of record for Deft. 93
26	PICCARELLO:	Motion for authorization to travel. 94
26	PICCARELLO:	ORDER: Deft allowed to travel from jurisdiction of US District Court, So. District of Fla., to points contained on the schedule from the dates of 3/11/80 thru 11/9/80. (JAG). (M-4/9/80). 95
21	ORIGINAL RECORD ON APPEAL TRANSMITTED TO USCA consisting of 2 Vols. Transcript and pleadings. —	
9	SARCINELLI:	Motion to Travel. 96
22	SARCINELLI:	Notice of change of address of Deft's Atty: 1401 Brickell Avenue, Suite 900 Miami, Florida 33131 (358-0811) 97

DATE 1980	PROCEEDINGS	
n. 15	CONT'D:	U. S. respond to deft's motion by statement of facts & memo of law no later than 1/21/80. Hearing on deft's motion will be conducted following hearing on defts' motions to suppress scheduled for 1/24/80. 1/15/80-PJK, Mag). M-1/23/80. 65
18	SARCINELLI:	Speedy trial status report & motion for determination of excludable time. 66
21	SRACINELLI: & MESSINA	Letter regarding discovery material. (Charles O. Farrar, Jr., Esq.). 67
22	SARCINELLI: & MESSINA	Motion to prohibit Govt. from introducing evidence not disclosed & memo in support. 68
23	GOVT:	Memo of law in opposition to deft Messina's motion to suppress statements & motion to dismiss. 69
23	GOVT:	Memo of law in opposition to deft Messina's motion to suppress. 70
24	GOVT:	Notice of document returned-(Motion to vacate order granting deft's motion to require Juntice Dept. to conduct search of other Govt. Agencies & memo of law). 71
25	SARCINELLI: & MESSINA	REVIEW & RECOMMENDATION: Defts' motion granted & Hon. Jose A. Gonzales, Jr. dismiss indictment or in alternative, bar U. S. from using evidence which Govt. failed to produce as well as evidence defts seek to suppress. (1/24/80-PJK, Mag)M-2/6/80. 72
30	GOVT:	Response to deft Sarcinelli's motion for determination of excludable time. 73
30	GOVT:	Response to deft Sarcinelli's motion to suppress. 74
30	SARCINELLI:	Letter regarding bill of particulars. (Lyons & Farrar) 75
30	SARCINELLI:	Letter regarding production of statements. (lyons & Farrar). 76
31	SARCINELLI:	Response to Govt's motion to vacate order granting motion to require Justice Dept. to search records of other agencies. 77
v. 1	SARCINELLI: & MESSINA	Motion to deny or reject Magistrate's recommendation to dismiss indictment or in alternative to bar use of evidence. 78
4	GOVT:	Motion to vacate order granting deft's motion to require the Justice Dept. to conduct search of other Govt. agencies & memo of law. 79
5	SARCINELLI:	Letter regarding discovery inspection. (Charles O. Farrar, Jr., Esq.). 80
6	GOVT:	~~Notice of document returned-(Motion to deny or reject Magistrate's recommendation to dismiss indictment or in alternative to bar use of evidence.).~~ 81 Du
4	SARCINELLI:	Motion to strike Govt's untimely motion to deny or reject Magistrate's recommendation to dismiss indictment. .81
6	MESSINA:	Response to motion to deny or reject Magistrate's recommendation to dismiss indictment or in alternative to bar use of evidence. (Exhibits attach). 82
6	SARCINELLI:	Response to Govt's motion to deny or reject Magistrate's recommendation to dismiss indictment. 83
8	SARCINELLI: & MESSINA	Transcript of motion to suppress on 1/24/80 @11:15 a.m. before Judge Kyle pages 1-10. 84

- continued -

Court of Appeals
of the State of Georgia

Clerk's Office

Atlanta, JUL 14 1982

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the transcript in the case therein stated, as appears from the records and files of this office.

Witness my signature and the seal of said Court hereto affixed, the day and year above written.

Clerk.

Alton Lark

Office - Supreme Court, U.S.
FILED
OCT 26 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-179

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

FRANK JOSEPH SACCHINELLI,
Petitioner,

v.

STATE OF GEORGIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF BY THE RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

THOMAS J. CHARRON
District Attorney
Cobb Judicial Circuit

JAMES T. MARTIN
Assistant District Attorney
Cobb Judicial Circuit

Please serve:

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Assistant Attorney General, *Counsel of Record for Respondent*

MICHAEL J. BOWERS
Attorney General

ROBERT S. STUBBS II
Executive Assistant Attorney General

MARION O. GORDON
First Assistant Attorney General

WILLIAM B. HILL, JR.
Senior Assistant Attorney General

QUESTIONS PRESENTED

1.

Whether or not the Georgia Court of Appeals properly affirmed the denial of Petitioner's motion to suppress evidence?

2.

Whether or not Petitioner has standing to challenge the constitutionality of subpoenas issued to third parties, requesting information pertaining to their records relating to the Petitioner?

3.

Assuming arguendo the need to examine the sufficiency of the affidavit tendered

in support of the Cobb County Police application for electronic surveillance, whether or not the affidavit was sufficient when it contained some inaccuracies, but when there has been no showing of deliberate or intentional misrepresentation or reckless disregard for the truth?

4.

Whether, in the complete absence of any showing of governmental misconduct which arises to the level of shocking the conscience, this Court should find Petitioner's conviction violates due process as a result of any actions taken by the Cobb County Police or District Attorney?

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PART ONE

STATEMENT OF THE CASE

The Petitioner, Frank Joseph Sacchinelli was indicted,along with co-defendant Walter Arthur Parker, by the August Term, 1980 Bartow County Grand Jury for violating Georgia's Controlled Substances Act. Petitioner and his co-defendant were charged for possession of 1,995 pounds of marijuana with intent to distribute same. Following a jury trial on December 2, 3, and 4, 1980 Petitioner and his co-defendant were found guilty, and on December 15, 1980 Petitioner received a ten

year sentence (nine years incarceration, one year probated) plus a $10,000.00 fine. (R. 337-338; TT. 269). [1] On appeal to the Georgia Court of Appeals Petitioner's conviction and sentence were affirmed. Sacchinelli v. State, 161 Ga. App. 763, ___S.E.2d___ (1982). Petitioner's state application for a writ of certiorari was denied by the Georgia Supreme Court on April 21, 1982. (Petitioner's Appendix A; Petitioner's Appendix of certified copies of Supreme Court decisions and exhibits, p. 1). On May 18, 1982, the Georgia Supreme

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1/ References to the pagination of the official record from the Superior Court of Bartow County shall be referred to as (R. ___). References to the pagination of Petitioner's trial transcript shall be referred to as (TT. ___). References to the pagination of the transcript of Petitioner's motion hearings shall be referred to as (MT. ___).

Court denied Petitioner's motion for rehearing. (Petitioner's Appendix of certified copies of Supreme Court decisions and exhibits, p. 2). Thereafter, on July 17, 1982, Petitioner filed his present petition for a writ of certiorari in this Court.

PART TWO

STATEMENT OF THE FACTS

Petitioner and his co-defendant, Walter A. Parker, were arrested at an airport in Bartow County, Georgia at approximately 10:30 p.m. on May 6, 1980, after police authorities had observed their suspicious behavior and had confirmed that Petitioner and his co-defendant had landed their aircraft and unloaded approximately 1,000 pounds of marijuana. (TT. 47-62, 125-129).

At the airport at the time of the arrest was Mr. C. W. Moore, a patrol officer with the United States Customs Service; Mr. David Hallman, a Special Agent with the Georgia Bureau of Investigation; Mr. Don Phillips, a Cobb County Police Narcotics Agent, and Mr. Ron Coleman and Mr. James Garmon, Narcotics Agents with the Bartow County Sheriff's Department. (MT. 159, 169, 209, 218-219, 287, 345).

Prior to Petitioner's trial he filed a motion to suppress evidence which had been seized at the scene of the crime and at his apartment, claiming that his arrest and the subsequent seizures had been the direct result of an illegal wiretap and an illegal seizure of documents consisting of messages and telephone numbers from an answering service

that the Petitioner had utilized. (R. 25-26, 30-31, 108-111, 147-154; MT. 159-1470).

Testimony which was given during the extensive motion to suppress hearing showed that the Georgia Bureau of Investigation and Cobb County Police Officials first became aware of Mr. Sacchinelli in November of 1978 when an investigator from the Drug Enforcement Administration became suspicious of Mr. Sacchinelli at the Atlanta, Georgia Airport and learned that he was carrying $100,000.00 cash in a briefcase. The Drug Enforcement Administration attempted to maintain surveillance of Mr. Sacchinelli when he arrived in Miami; however, they were unsuccessful. (MT. 362, 369). The agent from the Drug Enforcement Administration later contacted officials from the Georgia Bureau of Investigation and Cobb County in an attempt to gain

some background information. (MT. 363, 369, 403, 699).

Between November 1978 and November 1979, the investigation of Mr. Sacchinelli consisted basically of an exchange of information between the Drug Enforcement Administration, the Georgia Bureau of Investigation, and the Cobb County Police. In November of 1979 a pen register was attached to Petitioner's home telephone by Agent Pierce of the Cobb County Narcotics Squad. (MT. 363). Based upon the telephone numbers derived from the pen register and the police authority's knowledge of individuals to whom Petitioner placed calls, an application was considered for a wiretap; however, before the wiretap could be implemented Petitioner's phone had been disconnected. (MT. 363).

At this point, Petitioner also became of interest to the United States Customs Service. On January 17, 1980, a Cessna 310 airplane, bearing the tail number 69673 was intercepted by the United States Customs Service as the aircraft was making an illegal entry into the United States. (MT. 363, 466, 471). The suspect aircraft was tracked to Anderson, South Carolina. While in Anderson, the plane evaded an attempt to block it on the runway and was able to take off. As a result thereof, the Customs Service contacted sheriffs' departments in north Georgia and posted a lookout in reference to that particular aircraft. (MT. 471, 472).

Customs Agent Robertson, who testified at the suppression hearing, stated that his investigation revealed that the aircraft had been sold to Petitioner Sacchinelli who had an address in Smyrna, Georgia which is located in Cobb County.

Upon proceeding to Sacchinelli's apartment, Agent Robertson found a folded piece of paper taped to the apartment door which read, "To whom it may concern." Upon lifting the fold in the paper, the officer read further, "U.S. Customs DEA and FAA, suck shit. Everybody else call me on my beeper." (MT. 472-472).

On February 26, 1979, GBI Agent Padgett received a call from Customs Agent Robertson in Atlanta, Georgia informing him that Petitioner Sacchinelli's plane was located at hangar 14 in the Bartow County Airport. GBI Agent Padgett and Lieutenant Kahealey of the Cobb County Police Department then drove to the airport and confirmed that Petitioner Sacchinelli had rented aircraft hangar 14, and that an airplane numbered N69673 was housed in that hangar. (MT. 363-364).

GBI Agent Padgett then called Mr. Harold Briscoe, a United States Customs Agent in the Service's Air Wing Section, who informed him that the information about the plane had originated from a Drug Enforcement Administration office in Louisville, Kentucky and Special Agent Harold Brown. Upon contacting Agent Brown, GBI Agent Padgett learned that Brown had information that Mr. Sacchinelli's airplane would be leaving the United States sometime within the following four or five weeks to obtain approximately 200 pounds of cocaine, and that a surveillance would reveal that the plane would return to either the North Georgia area or Southern Tennessee. (MT. 364). According to GBI Agent Padgett, surveillance began at the Bartow County Airport prior to the implementation of any wiretap. (MT. 369, 817). The application for electronic surveillance was made by local police authorities

with the aid of the GBI and the Cobb County District Attorney's Office on February 26, 1980. (MT. 708-709, 752, 778-780, 818-823). On February 28, 1980, the first conversations were monitored pursuant to the authorized surveillance, and the surveillance was ultimately terminated after one extension on April 4, 1980 and was determined to be unsuccessful. (MT. 432, 718-719, 747-748). According to GBI Agent Padgett, Cobb County Narcotics Agent Phillips and former Cobb County Narcotics Agent Pierce nothing was obtained either from the wiretap of Petitioner's telephone or as a result of a subpoena issued on the Northwest Answering Service which led police authorities to the arrest of the Petitioner at the Bartow County Airport. (MT. 272-273, 277, 368, 369, 382, 409, 428, 432, 718-719, 737, 748).

Surveillance was maintained on the aircraft in Bartow County, and flights of the aircraft were observed on May 2, 1980. (MT. 226, 364-365; TT. 4). After returning to Bartow County, both Petitioner Sacchinelli and co-defendant Parker rode in an automobile and surveyed both ends of the runway. (MT. 231, 233). Activity continued on and around the airplane on May 4, 1980. (MT. 228, 365). When GBI Agent Padgett arrived at the airport on Monday, May 5th he discovered that the plane was gone. (MT. 236, 366). Padgett then contacted the GBI Smuggling Squad Commander, Michael Eason and requested that he call the Customs Service to inquire about Sacchinelli's plane. (MT. 366, 465). Undercover agents from the Customs Service verified that Petitioner's plane and Petitioner were on the South Caicos Island in the Caribbean. (MT. 237, 278, 345, 477, 486).

Thereafter, following a meeting between law enforcement officials from the Georgia Bureau of Investigation, the Cobb County Police and the United States Customs Service, it was decided that GBI Agent Padgett and Cobb County Police Lieutenant Kahealey would proceed to an airport at Madisonville, Tennessee while GBI Agent Hallman, Customs Patrol Officer Moore and Cobb County Narcotics Officer Phillips proceeded to maintain surveillance at the Bartow County Airport. (MT. 219, 366, 420, 475; TT. 5). At approximately 7:30 p.m. on May 6, 1980, two Bartow County Sheriff's Deputies who were also part of the surveillance team drove to the north end of the runway at the Bartow Airport. They observed no vehicles or bails of marijuana. (TT. 29, 30). After checking the runway no other aircraft landed or departed from the airport property until an aircraft landed

at 10:30 p.m. (TT. 30, 31, 49, 50). As the aircraft landed, GBI Agent Hallman identified it as a Cessna 310, matching the description of the plane they had been waiting for. (TT. 47; MT. 162). The aircraft stopped after turning off the runway, turned off its lights and shut down the engines. (TT. 48, 51; MT. 162). The airplane remained in that position at the end of the runway for approximately fifteen minutes. (MT. 162). During that time Agent Hallman heard a thump. (TT. 52). Agent Hallman saw no activity away from the silhouette of the aircraft. (TT. 76). His vision behind the aircraft was obstructed by the airplane itself. (TT. 89, 95, 299). The plane then started its engines, turned on its lights

and taxied south. (TT. 52-53, 60; MT. 162).

Agent Hallman then moved to where the aircraft had stopped and discovered large bales of marijuana in nylon sacks partially covered by a poncho. Other items found at the scene included a bladder gasoline tank, an emergency kit, a hose, a plastic jug, tissue, a pump and flashlights. (TT. 54, 63, 67, 68, 72, 164).

Petitioner Sacchinelli exited the aircraft when it arrived at the hangar. He was stopped by Cobb County Police Agent Phillips, who had been in radio contact with Agent Hallman while the aircraft had been at the north end of the runway. (TT. 50, 127, 241; MT. 219-220).

Petitioner's co-defendant Parker was ordered from the aircraft by other officers, who engaged in a pat-down

search, removing a gas cap from his pocket. (TT. 31, 34, 35; MT. 221, 287-88, 328). The bladder tank found at the scene was missing the gasoline cap. (MT. 196, 323-324). Both subjects were detained, then arrested, after confirmation that marijuana had been found at the end of the runway. (MT. 131, 246). The aircraft was then searched after the arrest and numerous items including maps, charts, flashlights, a life raft, a piece of wood, and plastic tubing were seized. (MT. 131; TT. 123, 138, 140, 145-146, 250).

Upon conclusion of the pretrial suppression hearing, the trial court ruled that the arrest of Petitioner and his co-defendant was based upon information obtained from an independent and separate source other than the electronic surveillance and the Cobb County subpoenas

which had preceded it. (MT. 1477).

At Petitioner's trial, no conversations obtained from the electronic surveillance were played, nor was any of the content discussed in testimony. All testimony was limited to information obtained from sources other than the electronic surveillance.

Additional facts may be related in the following portion of this brief to more fully explain Respondent's arguments.

PART THREE

REASONS FOR NOT GRANTING THE WRIT

I. SINCE THE ARREST OF THE PETITIONER AND THE SEIZURE OF EVIDENCE AT THE SCENE OF HIS ARREST RESULTED DIRECTLY FROM INFORMATION WHICH HAD BEEN OBTAINED FROM SOURCES NOT CHALLENGED IN PETITIONER'S MOTION TO SUPPRESS, THE GEORGIA COURT OF APPEALS PROPERLY FOUND NO MERIT TO PETITIONER'S FOURTH AMENDMENT CLAIM.

Petitioner's first argument in support of the writ asserts that the evidence at his trial overwhelmingly demonstrated that evidence seized at the

Bartow County, Georgia airport at the time of his arrest was the direct result of the illegal usage of subpoenas by the Cobb County Police, and that in reviewing the Fourth Amendment issue on direct appeal, the Georgia Court of Appeals erroneously applied an "any evidence" test in holding that an independent, untainted source of information led police to Petitioner's arrest, thus obviating the need to suppress the evidence which had been seized.

Petitioner's second argument asserts that an additional, independent reason for the granting of his motion to suppress, is based upon an insufficient affidavit attached to the application for a wiretap of Petitioner's telephone, which had been submitted by the Cobb County Police. Petitioner asserts that the affidavit of former Cobb Police Officer Pierce included information obtained

from the usage of invalid subpoenas, contained deliberately false information, was insufficient to show criminal activity, and contained stale information.

On direct appeal of Petitioner's case, the Georgia Court of Appeals found that while there was some information to support Petitioner's arguments that his arrest resulted directly from information gained through an abuse of the subpoena power, and as a result of a wiretap based on allegedly false swearing, the court also found that the evidence was sufficient to support the trial judge's conclusion that there were also sufficient separate, untainted sources of information which could and did lead police authorities to the arrest of the Petitioner and his co-defendant. Holding that the trial judge's findings would not be disturbed unless clearly erroneous, the Court of Appeals affirmed the trial court's denial

of Petitioner's motion to suppress. Sacchinelli v. State, 161 Ga. App. 763, 764-765, ___S.E.___ (1982).

Contrary to Petitioner's assertions, the Georgia Court of Appeals correctly applied the law to the facts of this case. In Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920), this Court recognized that an exception to the Fourth Amendment exclusionary rule could result in situations when the police gained knowledge of incriminatory evidence from independent sources other than those which have been tainted by Fourth Amendment violations. The Silverthorne doctrine was cited approvingly in Nardone v. United States, 308 U.S. 338, 341 (1939).

Of course, as Petitioner notes, the exclusionary rule may bar evidentiary "fruit" which has been obtained as a direct result of an illegal search or illegal

coercive interrogation. Wong Sun v. United States, 371 U.S. 471, 485 (1963). However, as was noted in Wong Sun, that case was not concerned with a situation where the exclusionary rule had no application, because the government had learned of the incriminatory evidence from an independent source. Id., at p. 487. In Wong Sun this Court specifically stated:

> We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' Id., at p. 487-488, quoting, R. Maguire, Evidence of Guilt, 221 (1959).

As noted previously, there is an insufficient connection between a primary

illegality and the ultimate seizure of evidence when the ultimate seizure of the derivative evidence flows from an independent, untainted source. Silverthorne Lumber Co. v. United States, supra; United States v. Ceccolini, 435 U.S. 268, 274 (1978); United States v. Brookins, 614 F.2d 1037, 1041-1042 (5th Cir. 1980); United States v. Houltin, 556 F.2d 1027, 1031 (5th Cir. 1978), cert. den., 439 U.S. 826 (1978). An additional category of insufficient connection occurs if the derivative evidence would inevitably have been discovered during a police investigation without the aid of the illegally obtained evidence. United States v. Brookins, supra, at p. 1042, 1044; United States ex rel. Owens v. Twomey, 508 F.2d 858, 865-866 (7th Cir. 1974); see also, Brewer v. Williams, 430 U.S. 387, 406, n. 12 (1977).

The Georgia Court of Appeals correctly applied the clearly erroneous standard in reviewing the trial court's determination on the motion to suppress. Upon review of the denial of a motion to suppress after conviction, the evidence must be viewed in a light most favorable to the government. United States v. Henry, 615 F.2d 1223, 1230 (9th Cir. 1980) [cases cited]. An appellate court should not overturn the trial judge's findings on a motion to suppress unless his findings are clearly erroneous. Id., at p. 1230; United States v. Sierra-Hernandez, 581 F.2d 760, 764 (9th Cir. 1978), cert. den., 439 U.S. 936 (1978); United States v. Smith, 649 F.2d 305, 309 (5th Cir. 1981); United States v. Berd, 634 F.2d 979, 986 (5th Cir. 1981); United States v. Miller, 589 F.2d 1117, 1130 (1st Cir. 1978), cert. den., 440 U.S. 958 (1979); United States v. Buettner-Janusch, 646 F.2d 759, 764

(2nd Cir. 1981), cert. den., ___U.S.___, 102 S.Ct. 126 (1981).

Although Petitioner argues that he would not have been located at the Bartow County, Georgia airport if the police had not obtained information as a result of the issuance of illegal subpoenas to the Northwest Answering Service and as a result of an allegedly, illegal wiretap; it is clear from the totality of the evidence, and as reflected in the aforesaid statement of facts, that the independent investigation and surveillance of the Petitioner by the Drug Enforcement Administration and United States Customs Service, gave the Georgia Bureau of Investigation completely independent information which ultimately led to the surveillance of the Petitioner and his aircraft, and his resulting arrest accompanied by the seizure of of marijuana and other items connecting

him with the violation of Georgia's Controlled Substances Act. Although Petitioner argues the insufficiency of the evidence showing an independent, untainted source of information which led the police to the Petitioner; nevertheless, as the aforesaid statement of facts shows, there was more than sufficient evidence to support the findings of the trial court and the Georgia Court of Appeals. Thus, since there was sufficient evidence to show that the Petitioner's arrest arose from information obtained from an independent source with the Drug Enforcement Administration, that neither the information gained from the issuance of investigative subpoenas by the Cobb County Police nor the wiretap of Petitioner's telephone had provided information leading to Petitioner's arrest or the seizure of evidence, and since it was inevitable

that Petitioner would have been arrested at the Bartow County Airport notwithstanding any subpoenas or wiretap surveillance by the Cobb County Police, this Court should find no merit to Petitioner's first or second arguments.

II. PETITIONER HAS NO STANDING TO CHALLENGE THE SUBPOENAS WHICH WERE SERVED ON THE NORTHWEST ANSWERING SERVICE AND THE SOUTHERN BELL TELEPHONE COMPANY.

Petitioner asserts that as the direct result of illegal subpoenas which were served on the Northwest Answering Service and the Southern Bell Telephone Company, police gained information which was utilized in obtaining a wiretap of his telephone, and thereafter information was learned through the wiretap which ultimately led police to the Bartow County Airport and resulted in Petitioner's arrest.

Respondent has already cited in the aforesaid statement of facts, the information which police authorities

possessed resulting from other than the subpoenas and wiretaps, and which alone justified the denial of Petitioner's motion to suppress. Additionally, Petitioner does not have standing to object to the issuance of the subpoenas which he claims initiated the illegal investigatory process which allegedly violated his Fourth Amendment rights.

Initially, the threshold question in any proceeding where a criminal defendant claims a Fourth Amendment violation is one of standing. Without standing to contest a search or seizure, its legality is of no consequence. Brown v. United States, 411 U.S. 223 (1973); Katz v. United States, 389 U.S. 347 (1967); United States v. Salvucci, 448 U.S. 83 (1980).

Of course the Fourth Amendment guarantees, " . . . [t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." Whether or not the Fourth Amendment has been violated, depends upon whether the person invoking its protection can claim a justifiable, reasonable or legitimate expectation of privacy that has been invaded by governmental action. Smith v. Maryland, 442 U.S. 735, 740 (1979) [cases cited].

Recently, in United States v. Miller, 425 U.S. 435 (1976), this Court addressed a similar question as has been presented in this case. In Miller, the defendant had moved to suppress copies of bank records which had been obtained by an allegedly defective subpoena. The defendant in Miller claimed that the subpoena was invalid because it was issued

by a United States district attorney rather than the clerk of the court, no return had been made to it, and it was returnable on a date when the grand jury was not in session. Upon receipt of the subpoena, the banks who were served allowed federal agents to examine and copy the defendant's bank record. After revealing this information, the banks were told that it would be unnecessary for them to appear before the federal grand jury. Id., at p. 437-438.

This Court found that there were no Fourth Amendment interests of the defendant implicated, because the defendant could not claim a reasonable or legitimate expectation of privacy, notwithstanding his argument that the bank records were simply copies of private financial transactions of the defendant. Id., at p. 442-443. In

finding the absence of a legitimate Fourth Amendment interest, this Court stated:

> This Court has repeatedly held that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and confidence placed in the third party will not be betrayed. Id., at p. 443, citing Hoffa v. United States, 385 U.S. 293, 302 (1966); Lopez v. United States, 373 U.S. 427 (1963); United States v. White, 401 U.S. 745, 752 (1971).

Just as in Miller, all records in possession of the third party answering service were there with the knowledge and consent of Petitioner Sacchinelli. They were prepared in the normal course of business and reviewed by the employees of the answering service, a commercial establishment. As in Miller, Petitioner

can claim neither ownership nor possession of the documents. Here, the Northwest Answering Service was invited as a third party to act as an intermediary between caller and subscriber. The subscriber had no reasonable expectation that one or more of the answering service operators would not view or reveal his messages.

Likewise, Petitioner cannot claim a reasonable expectation of privacy in the records of the Southern Bell Telephone Company. The obtaining of the telephone company records was no more intrusive than the use of a pen register. In Smith v. Maryland, 442 U.S. 735 (1979), this Court held that obtaining information pertaining to telephone numbers called by use of a pen register does not violate the Fourth Amendment interests of a telephone user who is the subject of the pen register usage.

Since no Fourth Amendment interest of the Petitioner has been implicated under the facts of this case, it should be governed by the general rule that the issuance of a subpoena to a third party to obtain records of that party does not violate the rights of a defendant even if a criminal prosecution is contemplated at the time the subpoena is issued. United States v. Miller, supra, at p. 444. Petitioner Sacchenilli has not shown standing and has no reasonable expectation of privacy which would confer standing upon him. A defendant who fails to establish standing may not complain of a Fourth Amendment violation. See Rakas v. Illinois, 439 U.S. 139 (1979).

III. THE AFFIDAVIT SUPPORTING THE STATE'S APPLICATION FOR ELECTRONIC SURVEILLANCE WAS SUFFICIENT.

Respondent has previously argued that Petitioner's motion to suppress evidence was justifiably denied because notwithstanding the service of subpoenas upon the Northwest Answering Service and the Southern Bell Telephone Company, the State had received independent information which led to Petitioner's arrest. Assuming arguendo this Court determines that an examination of the affidavit supporting the police authority's application for electronic surveillance is necessary, Respondent submits that a review of said challenged affidavit, in light of the totality of the evidence presented at trial, amply demonstrates the affidavit's sufficiency.

Petitioner's cite to Franks v. Delaware, 438 U.S. 154 (1978) fails to give proper emphasis to the appropriate language cited in that decision, which requires that before the constitutional validity of an affidavit may be successfully attacked, there must be a showing of a deliberate falsehood or reckless disregard for truth on the part of a governmental affiant. Id., at p. 171-172. Here, no showing was made to the trial court that any incorrect statement in the affidavit of Agent Pierce was included knowingly and intentionally or with reckless disregard for the truth. As the Georgia Court of Appeals noted upon reviewing the record, although some statements were shown to be incorrect, there was an insufficient showing that they were deliberately false. Sacchinelli v. State, supra, at p. 764. Respondent also submits that none of the incorrect statements had a material effect on the content of the affidavit.

Martin Dardis was shown to have been an investigator with the Dade County Attorney's Office rather than an Assistant State Attorney. (MT. 1389, 1398). Nevertheless, he was shown to have investigated Petitioner in relation to a possible cocaine purchase in Miami. (MT. 1398, 1426). On cross-examination, defense witness Riley indicated that the part of the affidavit to which he had personal knowledge, about Petitioner being in Miami for the purpose of buying cocaine, was true. (MT. 1427). Martin Dardis and witness Pierce had worked on the investigation together. (MT. 1423).

Petitioner also points to page 6 of the affidavit where Agent Pierce stated:

> Affiant further shows that on the 24th day of August, 1979, Sam Sarcinelli and Pamela Messina, along with another individual indicted by the Federal Grand Jury on the charges of conspiracy and possession with intent to distribute approximately 13 and two-tenths pounds of cocaine. The information related to affiant by members of the Drug Enforcement Administration in the month of September, 1979 and again in January, 1980. (Petitioner's Exhibit Appendix, p. 37).

Petitioner complains that the affidavit did not contain all the information concerning Sarcinelli and Messina, in that it included their arrest but not the dismissal by the court at a later date. A review of pages 5 and 6 of the affidavit shows that it does not include any information about a disposition of the case, but merely relates that a seizure of cocaine and currency was made from two individuals who were indicted. Both the seizure and the indictment were true and undisputed. A later dismissal on a motion

to suppress does not alter that truth.

As this Court may note on page 3 of the same affidavit, affiant related that a not guilty jury verdict was related with reference to a prosecution against a Mr. Forrest A. Roberts, who had been associated with a Mr. John Benson, a mutual acquaintance of the Petitioner. Id., at p. 34.

Petitioner's complaints pertaining to staleness of transactions recited in the affidavit, fails to recognize that affiant Pierce was reciting a continuing series of acts, which as a whole, went to establishing probable cause justifying the issuance of the surveillance order. In Bartisda v. Henderson, 487 F.2d 860, 864 (5th Cir. 1973), the Court noted that when an affidavit recites a mere isolated violation, then it is not unreasonable

to believe that probable cause quickly dwindles with the passage of time; but on the other hand if an affidavit recites activity which indicates a protracted or continuous conduct, time is of less significance. The affidavit of Agent Pierce was updated, when he presented it to the trial judge. (MT. 1087, 1088, 1305-1308). When considered as a whole, the affidavit was not stale.

In conclusion, Respondent submits that the affidavit and oral information submitted to the trial judge were sufficient to support the probable cause finding. The trial court reviewed the affidavit as a whole rather than in dissected parts as Petitioner would advocate. Finally, there was no adequate connection made between the electronic surveillance and Petitioner's ultimate arrest at the

Bartow County Airport, and no tapes resulting from the electronic surveillance were played at Petitioner's trial.

As a consequence, assuming this Court deems it necessary to review the sufficiency of the affidavit supporting the application for electronic surveillance, Respondent submits that in light of the record as a whole, this Court will conclude the affidavit is sufficient.

IV. THERE IS NO MERIT TO PETITIONER'S ASSERTION THAT AS A RESULT OF GOVERNMENTAL MISCONDUCT IN HIS CASE, THE BASIC TENENTS OF DUE PROCESS REQUIRE THE DISMISSAL OF HIS INDICTMENT.

Petitioner's final argument asserts that because of the flagrantly unlawful investigative techniques of the Cobb County District Attorney's Office and the Cobb County Police Department, the trial court, on due process grounds, should have utilized its inherent prerogative to dismiss the indictment which had been brought against Petitioner. Previously, this Court has utilized its authority to reverse a conviction when governmental conduct has been so outrageous as to offend the canons of decency and fairness

inherently incompassed within the due process clause of the Fourteenth Amendment to the United States Constitution. Rochin v. California, 342 U.S. 165 (1952). The facts of that case, however, are far removed from anything which occurred in Petitioner Sacchinelli's case.

In Rochin local police authorities illegally broke into the defendant's bedroom, struggled to remove suspected narcotics from his mouth, and being unsuccessful in that attempt, eventually extracted the contents of his stomach to obtain evidence against him. Viewing the overall circumstances of the case, this Court found that the governmental methods utilized in Rochin were too close to the rack and screw to permit constitutional differentiation. Id., at 172. Petitioner cites this Court to United States v. Russell, 411 U.S. 423 (1973), where in the course of that opinion

this Court stated,

> While we may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction, . . . the instant case is distinctly not of that breed. Id., at p. 431-432, citing Rochin v. California, supra.

Petitioner asserts that the present case fits the exception recognized in Russell. However, like Rochin, Russell is clearly distinguishable. The Russell case was an entrapment case where the Court of Appeals had expanded upon the traditional notion of entrapment which focused on the predisposition of the defendant. The lower appellate court had indicated a dismissal was appropriate whenever a determination was made that there had been an intolerable degree of

governmental participation in the criminal enterprise. Id., at p. 427. This Court found that the Court of Appeals erroneously expanded the entrapment defense, and that the defendant had been an active participant in an illegal drug manufacturing enterprise which had begun long before the governmental agents appeared on the scene. He was not an unwary innocent but an unwary criminal. Id., at p. 436. Thus, the essential focus in the Russell case was centered upon criminal governmental activity as it was involved in the context of entrapment. Of course, there was no entrapment defense utilized in Petitioner's case, and the police were not engaged in criminal activity.

Although Petitioner condemns the actions of the Cobb County Police in utilizing a subpoena to gain access to the records of the Northwest Answering Service, it must be noted that the subpoena was not initially used in an

investigation of the Petitioner. Cobb County Police Officer David Sisson testified that he secured the original subpoena while investigating another case against individuals who were suspected of dealing in narcotics smuggling. Petitioner Sacchinelli was not one of these individuals. (MT. 520-521). During the investigation of that other case, Officer Sisson had discovered that several individuals had made calls to the Northwest Answering Service. Upon checking with the owner of the answering service, Ms. Bryant, Agent Sisson learned that Ms. Bryant felt several of her clients had been involved in drug smuggling and she gave him the names of Danny Benson and Steve Mussick. Apparently when Mussick had been arrested his messages were switched to Petitioner Sacchinelli. It was at this point that Agent Sisson

originally asked to see the records of Petitioner Sacchinelli. The initial subpoena was not secured until Ms. Bryant indicated that she wanted a subpoena before she would release her records to the police. (MT. 522-523). Thus it is apparent that when the initial subpoena was obtained for the Northwest Answering Service Petitioner Sacchinelli was not a prime suspect but was merely a peripheral character whose name appeared on the fringes of another, independent investigation. Moreover, contrary to Petitioner's assertions, the overwhelming evidence presented to the trial court demonstrated that actions and information received totally independent from the subpoenas ultimately resulted in Petitioner's arrest and the seizure of 995 pounds of marijuana. Nothing occurred in this case which rises to the magnitude

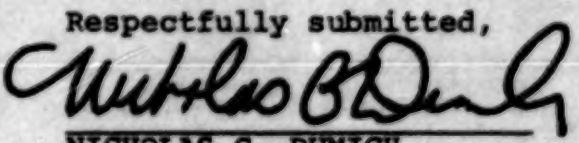
of the actions which were taken in Rochin. In fact, the facts of this case are quite similar to those as exhibited in United States v. Miller, supra, a case in which this Court reversed the granting of a motion to suppress evidence.

Since the actions taken by the Cobb County Police and participated in by the Cobb County District Attorney's Office were all taken in good faith, and since there was an entirely independent and unchallenged source of information which ultimately led to Petitioner's arrest, this Court should find that Petitioner's due process rights were not violated as a result of alleged governmental misconduct.

CONCLUSION

For all of the aforesaid reasons, this Court should deny the petition for writ of certiorari which has been filed in this case.

Respectfully submitted,



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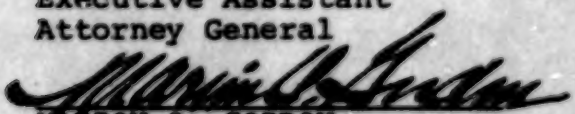

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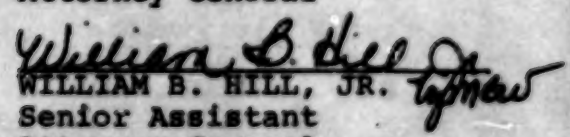

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CERTIFICATE OF SERVICE

I, Nicholas G. Dumich, Attorney of Record for the Respondent and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent, by depositing a copy of same in the United States mail, with sufficient postage affixed thereon, and addressed to:

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This 25th day of October, 1982.

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